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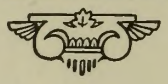

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COLLEGE OF BUSINESS ADMINISTRATION

Thesis

TRUST DEPARTMENTS IN NATIONAL BANKS

by

JULIA WILDES NICHOLSON
(B.C.S. Northeastern University 1929)

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TRUST DEPARTMENTS IN NATIONAL BANKS

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CHAPTER I

INTRODUCTION

A. PURPOSE OF THESIS AND METHOD OF APPROACH

The purpose of this thesis is to describe the activities of trust departments in national banks. The method of approach is empirical -- using source books as well as knowledge gleaned from ten years of personal experience as trust accountant of a national bank.

B. AUTHORIZATION

The Act of Congress, approved December 13, 1913, (38 statute 251), gave the Federal Reserve power, inter alia, "to grant by special permit to national banks applying therefor, when not in contravention of state or local law, the right to act as trustee, executor, administrator, or registrar of stocks and bonds under such rules and regulations as the said board may prescribe." (1)

Therefore, it was up to the courts to decide whether, in any particular case, the exercise of the powers granted would be in contravention of state or local law.

Controversies, as expected, did arise in the construction of the Act and resulted in its amendment in 1918. The Federal Reserve Act amended by the Act of September 26, 1918, "40 statutes, 867" provided in part: Section 11. The

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(1) Index, Digest of Federal Reserve Act and Amendments, p.23.

Federal Reserve Board shall be authorized and empowered:

"To grant by special permit to national banks applying therefor, when not in contravention of state or local law, the right to act as trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, committee of estates of lunatics, and in any other fiduciary capacity in which state banks, trust companies, and other corporations which come into competition with national banks are permitted to act under the laws of the state in which the national bank is located.

"Whenever the laws of such state authorize or permit the exercise of any or all of the foregoing powers by state banks, trust companies, or other corporations which compete with national banks, the granting to and the exercise of such powers by national banks shall not be in contravention of state law within the meaning of this Act."(1)

In some states prior to the enactment of the Federal Reserve Law, national banks were functioning along trust lines through subsidiary corporations under state charters.

This marks the beginning of the project which is my discourse: Trust Departments in National Banks.

C. SIGNIFICANCE

The fact that national banks were permitted to have trust departments is significant considered in relation to

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(1) Federal Reserve Board - Regulation F, p. 1.

the whole Federal Reserve system. At the time of inception of trust departments the Federal Reserve was a weak soldier -- groping for reinforcements, for many bankers considered the whole plan an unsound experiment.

This strength was found by adding trust departments to national banks: that strategy kept many national banks from changing into state banks which were not compelled by law to become members of the Federal Reserve. Through promise of increase in profits other banks were attracted into the national banking system.

D. DEVELOPMENT

Before proceeding further let us trace briefly the development of trusts in general.

1. Of Trusts in General

The idea of trusts is as old as civilization itself; although its present manifest forms are recent.

Back in the times of the ancient Egyptians -- the priests were entrusted with the knowledge of the community which they passed on from generation to generation with a respect for its preciousness, which we who today have printing and books easily available, cannot even cognize. These priests guarded this culture, for such it was, and the methods of its attainments, considering them God-given. They admitted into their circle only such trustees as were willing to fulfill the processes of spiritual catharsis and so prepare themselves for the sacred mission. So well did they perform

their trust that we today are still digging out and digging at their well preserved hieroglyphic secrets.(1)

The Bible is full of records of trusts beginning with the Lord giving Adam and Eve the garden of Eden to keep for Him. One of its climaxes is the words of Moses: "And Moses took the blood, and sprinkled it on the people, and said, Behold the blood of the covenant, which the Lord hath made with you concerning all these words."(2)

The concept of assurance, agreement, integrity, faith, certitude, -- in short trust or covenant is of the essence of Christianity, i.e. Timothy I. 6: "O Timothy guard that which is committed unto thee, turning away from the profane babbling and oppositions of the knowledge which is falsely so called, which some professing have erred concerning the faith."(3)

The early Christian concentration on a spiritual life after death would seem at short sight to exclude an interest in the disposition of the physical effects of the deceased. But the same kindly charity and love for the man while he was living assumed a desire to fulfill his earthly wishes when he was no longer able to do so.

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(1) Mantz, J.E. Genesis and Early Concepts of Trusteeship in Trust Companies Vol. 44, Jan. to June 1927, pp. 655.
(2) The Book of the Covenant, Old Testament, Modern Reader's Bible, p. 75.
(3) From the First Epistle of Paul the Apostle to Timothy, The New Indexed Bible.

At first trusts were a matter of simple friendship as when in the Phaedo -- it says concerning Socrates: "They were his last words -- he said: Crito, I owe a cock to Asclepius; will you remember to pay the debt? The debt shall be paid, said Crito; is there anything else?"(1)

In more primitive communities -- such as the Haitian peoples described in Seabrook's Magic Island -- (2) the dead are supposed to exude a baneful and wierd influence to be propitiated or appeased rather than to be neglected or tampered with. Although there remain in simple people in every town and hamlet today traces of this superstition, it can be discounted for the purposes of this thesis in the formation of trust departments -- although it forms the basis for most of their advertising.

The Chinese kept their trusts from the beginning of their earliest civilization from a religious spirit founded on the worship of ancestors.

"How shall we praise the magnificence of the dead,
The great man humbled, the haughty brought to dust?
Is there a horn we should not blow as proudly
For the meanest of us all, who creeps his days,
Guarding his heart from blows, to die obscurely?"(3)

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(1) Plato -- Selections edited by Raphael Demos, Phaedo pp. 147.
(2) Seabrook, W. B. The Magic Island, pp. 100 "Zombies".
(3) Conrad Aiken, Tételestai in Modern American Poets, p. 335.

2. Of Corporate Bodies as Fiduciaries

In all the foregoing instances the testator had no protection under the law. He was dependent on the will of the individual trustee. Gradually there grew up a notion of groups of people, or corporate bodies as trustees.

Hammurabi, that king of Babylon (fl. ab. 1900 B.C.) who started the need for lawyers because of the inflexibility of law -- had a fixed law of inheritance so that a personal will was of very little use, and the judiciary were really the only capable executor. As a matter of fact we today in America are getting away from the individual trustee to the more permanent organization -- the bank; comparable to the old Babylonian judiciary -- and also I think, away from the carrying out of individual wills where they conflict with a sense of social good.(1)

The Romans also put in practice the notion of corporate trusteeship. In 144 B.C. Favonius, a Roman officer who died while with an army invading Portugal, willed that his sons should inherit his property only if they should bring back his body to be buried in a certain place in Rome -- a corporation, Favonius entrusted the carrying out of his will.

Wills are probably much older than we know for the earliest wills are presumed to be noncupatory, delivered

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(1) Mantz, J. E. Genesis and Early Concepts of Trusteeship in Trust Companies, Vol. 44, Jan. to June 1927, pp. 655.

8. Of Corporate Bodies as Fiduciaries

in words at the deathbed of the testator.

By 13 A.D. we know that the custom of depositing wills in a sacred temple, i.e. with a corporate body -- was well established for in that year Augustus Caesar, nephew of Julius, made his will and put it in the keeping of the Temple of Vesta under the care of the venerable priestesses. The will was read at the first meeting of the Senate after Augustus' death. It was very similar to modern wills - legacies to his family and friends; to his serving men, the soldiers, and to the Roman people; instructions concerning his funeral and tomb; records clarifying his particular business which happened to be running an empire instead of a factory; and for the last, much good advice to whomsoever would heed it.(1)

Much the same procedure was carried out during the Middle Ages in the half barbaric civilization that was known as the "dark ages". There had grown up from the idea of "taboo" -- an idea common to every naive people -- the belief that the body was inviolate within the sanctuary of a church. From this it was an easy step to the correlate preservation of treasure. So for years personal property and even wills were deposited for safe keeping in churches, -- in corporate bodies composed of priests. The custom arose of submitting wills for probate to bishops who therefore combined the office of temporal as well as

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(1) Harris, Virgil M., Ancient Curious and Famous Wills,

spiritual judge.

The Order of the Knights Templars founded at the time of the Crusades -- (existed from 1118 to 1312) -- was a powerful organization very similar to banks today. The treasurers of the branches of the order were frequently named as executors of wills. Looking backward, this was a decidedly forward looking and progressive group of business men judging modern capitalism as its goal! (1)

It was most reasonable that in an age when the object of living was salvation of the soul by certain symbolic acts, the church as intercessor for the soul should conduct the soul at its earthly end as well as its earthly beginning. Therefore, we find in the wills written about 1350 definite instructions for masses and other spiritual services; and who would be carrying them out but priests?

So -- in the will of Edward, Prince of Wales in 1376: "And we appropriate our very dear and beloved brother of Spain, Duke of Lancaster; the Reverend Fathers in God, William Bishop of Winchester, John Bishop of Bath; William Bishop of Asaph; our Confessor, Sir Robert de Walshaw; Hugh de Segrave, Steward of our Lands; Aleyn Stokes; and John Fordham, our executors. In testimony of which we have put to this our last will our privy seal, etc." (2)

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(1) Mantz, J.E. Genesis and Early Concepts of Trusteeship in Trust Companies, Vol. 44, Jan. to June 1927, pp. 655.

(2) Harris, Virgil M.; Ancient Curious and Famous Wills, p. 30.

3. Of Modern Trusteeship

a. In England

So we gradually evolve to the beginnings of the modern trusteeship as we know it today. We are rather stunned to learn that trusts, which now hold such high esteem and cognizance in law, originated in fraud. For we find Sir Robert Atkins during the reign of Charles II (1660-85) saying, "A trust had for its parents fraud and fear and for its nurse a court of conscience". (1)

Something must have been responsible for such a condition and upon further research we find blame resting on the doorsteps of the feudal law of tenures.

We are told that as early as 1279 the English Parliament was striving to remedy the ills (loss of feudal profits to the lords of the soil) caused by transfer of lands to religious and eleemosynary institutions, and in 1736 the Mortmain Act (Dead Hand) was passed destroying the right of devising land by will to charitable institutions. (2)

Previously it was the custom of the early Christian church in Rome not to recognize legacies to a corporation

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(1) The American Cyclopaedia, Vol. XVI. Edited by George Ripley and Charles A. Dana, 1876.

(2) Mortmain Acts -- "These acts had for their object to prevent lands getting into the possession or control of religious corporations or as the name indicates, in mortua manu. After numerous prior acts dating from the reign of Edward I, it was enacted by statute 9 George II, chapter 36 (called the Mortmain Act)" -- Black, Henry Campbell; "Law Dictionary", 2nd Edition.

even when it was one of its own institutions. But from the time of Marcus Aurelius -- 161 to 180 A.D. -- Roman law had permitted legacies to fraternities (much like modern trade unions).

The Mortmain Act was really forced because of the tax exempt property that was piling up, all owned by religious institutions.

And so, the early debtor in search of a way of protecting his property from his creditors, the freeholder in pursuit of a means of shielding the products of his toil from seizure by the landowners, and the clergy in hunt of a way of eluding the Mortmain Act, finally discovered that through the instrumentality of a "Use" their objects might be accomplished. (1)

The Mortmain Act -- the overhanging "Dead Hand", was not eliminated in three centuries -- just before Henry the VIII confiscated the monasteries in 1536 between one third and one half of all public wealth in England was owned by those tax exempt institutions showing the country's need for strenuous economic readjustment.

There is some difference of opinion as to the origin of "Uses". Some authorities are of the belief that they

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(1) "Use" -- "A confidence reposed in another who was made tenant of the land, or terre - tenant that he would dispose of the land according to the intention of the cestui que use, or him to whose use it was granted and suffer him to take the profits." -- Black, Henry Campbell; "Law Dictionary", 2nd Edition.

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were a development of the fidei-commissum of the Roman Law while others regard them as a product of English legal thinkers aided to some degree by the clergy, who were familiar with the Roman Law.

During the hectic thirty years war (1455-1485) many of the followers of the houses of York and Lancaster disposed of their property in trust -- in the event that their own side might be defeated. (1)

Then we find the "Use" operating somewhat as follows:

A transferring property to B for the benefit of C and the common law recognizing B as the holder of title. If C should commit a crime or refuse to meet his obligations to creditors, the property given by A to B for his benefit could not be attached by C's creditors. On the other hand, if B should abscond and take the property entrusted to his care by A for the benefit of C there was no remedy at common law. The result was that the court of chancery (the chancellor being usually a priest opposed, of course, to the Statute of Mortmain) came to the rescue.

In the reign of Richard II (1377-99) John Waltham, Bishop of Salisbury, and Lord Keeper, brought into existence the writ of subpoena by which the trustee (the party to whom the property was entrusted) could be summoned into Chancery and made answerable (under oath) to any charges brought

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(1) Mantz, J. E. Genesis and Early Concepts of Trusteeship in Trust Companies, Vol. 44, Jan. to June 1927, pp. 655.

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(1) Mantz, J. E. Genesis and Early Concepts of Trusteeship in Trust Companies. Vol. 44, Jan. to June 1927, pp. 665.

against him by the cestui que trust (beneficiary). This was necessary due to the abuses to which "Uses" were put.

"Uses" still remained a way of escape for those desiring evasion of legal obligations and there was need of a subterfuge. This took form in the enactment of the Statute of Uses.

It was the intent of the framers of the Statute of Uses to place legal title as well as beneficial use in the cestui que use or beneficiary. In other words, if A transferred property to B (trustee) for the benefit of C (cestui que use) then C was to hold title to the property as well as enjoy the income thereof. However, no provision was made for certain other gifts, grants or estates to uses, and conflicts necessarily arose. For instance, if A transferred property to B for the benefit of C, in trust for D, a rule of property existing prior to the enactment of the Statute of Uses was brought into play. This rule decreed that a use raised upon a use was void and that the statute applied only to the execution of the first use, stopping there and providing no remedy at law for the party entitled to the second use except the right of appeal to the Court of Chancery to compel performance. Hence, in case C was destroying the property he was to receive the benefits from and which he held in trust for D, D could ask the Court of Chancery for protection of his property.

The statutes did not execute the legal title to the

cestui que use in the transfer of personal property from one person to another for the benefit of a third person for a term of years, and in the transfer of property from one person to another to improve, repair, lease, and pay the income therefrom to a third person.

And now the Court of Chancery by virtue of its writ of subpoena demanded performance of these uses (not provided for by the statutes) under the title of "trusts". (1)

Little wonder then, that fraud and fear were spoken of as the parents of trust and the court of chancery as its nurse.

Lord Nottingham became chancellor in 1673 and to him credit is given for establishing trusts on a solid foundation.

Among the first to define the term "Use" was Sir Edward Coke. It is:

> "A confidence reposed in some other, not issuing out of the land but as a thing collateral, annexed in privity to the estate of the land, and to the person touching the land for which the cestui que trust has no remedy but by subpoena in chancery."(2)

The foregoing definition was found to be misleading and hard to interpret. Perhaps the one given by Underhill is more apprehendable. It says:

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(1) Perry, Jairus Ware; "A Treatise on the Law of Trusts and Trustees". 7th edition.

(2) Beach, Charles Fisk; "Commentaries on the Law of Trusts and Trustees", Vol. I.

> "In its most general sense, a trust is a confidence reposed in a person that he will act in certain matters for the benefit of another; but technically, it signifies a holding of property subject to a duty of employing it or applying its proceeds according to directions given by the person from whom it was derived." (1)

b. In America

Let us turn now to the English colonists in America and we find among the laws of some of the finally formed states the Statute of Uses with no equity jurisdiction. Here was a new country with abundant land, its pioneer inhabitants had not as yet established themselves on a strong foothold and their exploited resources were negligible.

Various attempts were made to secure equity jurisdiction prior to the Revolutionary War but with little or no success.

Trust powers were granted to the Farmers' Fire Insurance and Loan Company by the New York legislature in the year 1822. This company is still in business, having changed its name in the course of time to the Farmers' Loan and Trust Company of New York. The New York Life Insurance and Trust Company was granted like powers in 1830 and in 1836 two Philadelphia companies -- The Pennsylvania Company for Insurance on Lives and Granting Annuities and the Gerard Life Insurance Annuity and Trust Company (now The Gerard Trust Company) -- were also given trust powers. All these

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(1) Beach, Charles Fisk, Commentaries on the Law of Trusts and Trustees. Vol. I, pp. 4.

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(1) Bacon, Charles Pile. Commentaries on the Law of Trusts and Trustees. Vol. I, pp. 4.

companies are still operating. (1)

We learn, then, that trust activities were associated at first with the insurance business and it was not until 1853 that a charter was granted to carry on trust business exclusively. This privilege was granted the United States Trust Company of New York.

No statistics are available relative to trust companies prior to 1875 when the Comptroller of the Currency began issuing information. Such information was obtained from those companies willing to submit figures (as the Comptroller could not compel state institutions to furnish reports) and the 1875 report stipulated thirty-five trust companies with resources of $122,890,175. These trust companies were operating chiefly in New York, New Jersey, Pennsylvania, Maryland, Georgia, Illinois, Iowa, and all the New England States with the exception of Maine.

The comptroller's report of 1890 showed 149 companies with total resources of $503,801,336. The 1900 report showed 290 companies with total resources of $1,330,160,343. (2)

And now we return to the Federal Reserve Act which affected trust companies in two ways -- first, by allowing them membership in the Federal Reserve System; and second, by permitting national banks (members of the system) to exercise trust functions when not in contravention of state laws.

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(1) Herrick, Clay; History of Trust Companies in Encyclopaedia Americana, Vol. 3, pp. 207, 208.
(2) Ibid., pp. 207, 208, 209.

CHAPTER II

TRUST DEPARTMENT ACTIVITIES IN NATIONAL BANKS

The right thus secured by national banks to act as trustee has been questioned in many of the states but the courts in every case have ruled that the regulations established by Congress are paramount to state rules and that states must yield whenever conflicts arise.

A. CLASSIFICATION

There are various kinds of trusteeships employed for the conservation of estates, and they resemble each other in regard to the legal effect or responsibilities and are chiefly distinguished by the manner in which they are created. As a rule, trusts are commonly classified into two major divisions:

Personal or Individual Trusts

Corporate Trusts

And then we find Personal or Individual Trusts subdivided further into:

Court Trusts

Trusts under Private Agreement

1. Personal or Individual Trusts

a. Court trusts

Perhaps the most well-known forms of these trusts are, the executor under a will, the administrator of the estate of a decedent intestate, the trustee under a will,

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1. Personal or Individual Trusts

a. Court Trusts

Perhaps the most well-known forms of these trusts are, the executor under a will, the administrator of the estate of a deceased intestate, the trustee under a will,

the guardian of the estate of a minor, and the conservator of an estate of a person legally adjudicated as incompetent.

b. Trusts Under Private Agreements

There is the living or voluntary trust, created by a trust agreement between the trustor and the trustee. The trustor may give the trustee as many or as few powers as he chooses, watch the trustee's operations during his life, chance the deposited securities and the beneficiaries of the trust from time to time provided he reserves the right of revocation by will. In most states the same legal rule applies to the rights of beneficiaries under irrevocable trusts as apply to revocable trusts that have not been revoked by the trustor during his life with the exception of rights and duties arising under state and federal inheritance tax laws.

2. Corporate Trusts

The advent of the large corporation is responsible for the increasing demand for corporate trustee service, and national banks in performing such service are ever cognizant of their responsibilities. Banks must at all times consider not only their own protection but their duty to the public at large.

3. Secretary or Treasurer for Unincorporated Societies, Drives, Clubs and Eleemosynary Institutions

Often the president or some other official of a national bank is asked to serve as treasurer or secretary for a community drive, church, hospital or some other type

of eleemosynary institution and the work involved in carrying out the duties of such office is delegated to the trust department.

B. OTHER FEDERAL RESERVE REQUIREMENTS

The Federal Reserve Act contains the following rule:

> "No national bank shall receive in its trust department deposits of current funds subject to check or the deposit of checks, drafts, bills of exchange, or other items for collection or exchance purposes. Funds deposited or held in trust by the bank awaiting investment shall be carried in a separate account and shall not be used by the bank in the conduct of its business unless it shall first set aside in the trust department United States bonds or other securities approved by the Federal Reserve Board etc." (1)

And so, we find in national banks the trust department existing as a separate entity. Its size and divisions depend of course upon the amount of business transacted. In large banks we may find one section of the trust department given over to personal or individual trusts and another to corporate trusts. Let us assume this to be the case in this discourse.

C. OBJECT OF TRUSTS

Most trusts are created for some specific purpose and terminate upon the accomplishment of that purpose. The main objects of most trusts are to provide income for the creator or trustor during his life or for the life of some member of his family or other beneficiaries, to furnish

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(1) Federal Reserve Board, Regulation F, p. 1.

income for minor children until they reach majority, to preserve an estate in order to prevent the sale of family property and possessions. The beneficiary is entitled to have the trust in his or her favor carried into effect according to the trust agreement or according to the provisions of the will.

D. ADVANTAGES OF NATIONAL BANKS AS TRUSTEE

National banks in acting as trustee have a great deal in their favor to attract trustors. Being corporations they are endowed with continuity of existence whereas illness and death are the heritage of the individual trustee. Few individuals acting as trustees have financial responsibility and in this respect the national banks with their large resources and banking supervision are paramount. Few individuals are capable of or possess the knowledge necessary to exercise the duties involved in accounting for their trust, whereas the bank with its staff of experts comprising lawyers, accountants, and economists are fully prepared.

E. OPERATION OF INDIVIDUAL DIVISION

1. Living or Voluntary Trust

Let us consider first the living or voluntary trust and assume John Smith, a well-to-do depositor of the X National Bank, is desirous of placing some real and personal property in trust for his mother. He desires her to have

income for minor children until they reach majority. To preserve an estate in order to prevent the sale of family property and possessions. The beneficiary is entitled to have the trust in his or her favor carried into effect according to the trust agreement or according to the provisions of the will.

D. ADVANTAGES OF NATIONAL BANKS AS TRUSTEE

National banks in acting as trustee have a great deal in their favor to attract investors. Being corporations they are endowed with continuity of existence whereas individuals and death are the heritage of the individual trustee. The individuals acting as trustees have financial responsibility and in this respect the national bank with their large resources and banking supervision are paramount. Few individuals are capable of or possess the knowledge necessary to execute the duties involved in accounting for their trust, whereas the bank with its staff of experts consulting lawyers, accountants, and accountants are fully prepared.

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Let us consider first the living or voluntary trust and assume John Smith, a well-to-do depositor of the X National Bank, is desirous of placing some real and personal property in trust for his mother. He desires her to have

the income from the property during her life and at her death the property is to revert to him if he is living or to his estate, if he is not living. Mr. Smith talks the matter over with the trust officer of the X National Bank and he decides he will create the desired trust.

Some trust officers will recommend a certain attorney to a trustor for the purpose of drawing up the trust agreement or instrument; others may have an attorney who takes care of their legal affairs draw up the instrument and present it at a conference between trust officer and trustor. Care should be taken that the trust agreement definitely sets forth the intention of the trustor or creator and that the trust is of a type which the bank can accept for administration. The trust agreement contains the kernel of the trust and too much emphasis cannot be placed upon its importance. Several copies should be prepared and signed by the creator and trustee. The creator is given one of the copies at the time the creator gives over to the trust officer the trust property. Then we may say the trust exists. It may be revocable or irrevocable. If revocable, the creator retains the right to terminate it at any time. If irrevocable, the creator cannot change the trust without the consent of the beneficiaries.

The trust officer now has in his possession the trust agreement (dated September 1, 1933) together with the trust property which is composed of the following items:

Real Estate:			$40,000.00
One family dwelling located at 125 Blank St., Brookline, Mass. (Assessed valuation)			
Liberty Bonds:			51,000.00
500, 4 1/4 (32-47) at 102			
Stocks:			
400 shares Gen. Elec.	at 25 1/4	$10,100	
300 shares Am.Tel.& Tel.	at 127 1/2	38,250	
200 shares Penn. R. R.	at 38	7,600	
200 shares General Motors	at 34 1/4	6,850	62,800.00
Deposits in Savings Banks:			
The Lincoln Savings Bank		3,200	
The Pioneer Savings Bank		3,000	
The Franklin Savings Bank		3,000	9,200.00
Deposits in Commercial Banks:			
The First National Bank		10,000	
The Second National Bank		10,000	20,000.00
Cash			17,000.00
Total			$200,000.00

It is then the duty of the trust officer or a capable assistant to check over the trust property with the attorney to see that title is properly recorded in the name of the X Bank as trustee. The Cash ($17,000) is placed temporarily in the X Bank in a certificate of deposit and the cashier of the bank turns over to the trust officer or his assistant, as the case may be, government securities (say to the amount of $20,000) as security for the trust cash deposited in the bank. After the trust property has been properly recorded in the trust department the securities are placed in the vault in the section allotted to the trust department.

The vault space given over to the trust department

is under duo-control. This box cannot be opened by the trust officer or assistant trust officer without being opened at the same time by the cashier or some other officer who has been granted custodianship by the bank together with the trust officer.

2. Trusts Under Wills or Testamentary Trusts

Trusts under wills or testamentary trusts, on the other hand, are created by a last will and testament and do not become operative until after the death of the trustor and after the executor has closed his administration of the estate. In Massachusetts, if a testator has failed to name a trustee in his will and the appointment of a trustee is necessary to carry out the provisions of his will, the probate court may, after giving due notice to all persons interested, appoint a trustee giving him the same powers, duties, and title as if he had been named in the will.

Chapter 203, Section 5, provides as follows:

> "If a trustee under a written instrument declines, resigns, dies, or is removed before the objects of the trust are accomplished and no adequate provision for filling the vacancy is made therein the supreme judicial court shall, after notice to all persons interested, appoint a new trustee to act solely or jointly with the others as the case may be." (1)

A trustee becomes the legal owner of the property entrusted thereto for in every trust two estates exist, the trustee holding the legal and the beneficiary the

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(1) Massachusetts Probate Laws, Chapters 188 to 206 Inclusive of the General Laws of Massachusetts as amended by the Acts of the Legislatures of 1921 to 1926 inclusive. February 1928 edition.

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(1) Massachusetts Probate Law. Chapters 185 to 208 Inclusive of the General Laws of Massachusetts as amended by the Acts of the Legislatures of 1921 to 1938 Inclusive. February 1939 edition.

equitable estate with the right to compel the trustee to carry out the trust. However, the beneficiary cannot direct or advise the trustee unless such right is granted him in the trust instrument, but if he becomes suspicious of certain acts of the trustee in administering the estate he may have a receiver appointed to protect the property pending the removal of the trustee and the appointment of a new trustee.

It is the duty of the trustee to exercise the highest degree of good faith not only in caring for the trust property but in all transactions with the beneficiary. Since a trust is a personal confidence the trustee cannot delegate the whole trust to another. He cannot make a profit either direct or indirect or secure any advantage for himself out of the property entrusted to his care. However, the trustee is entitled to a reasonable compensation. In some states the amount of compensation is fixed by statute or rule of court and is a fixed percent of the gross income collected.

On all contracts made in regard to trust property the trustee personally is held liable and the trustee is given the right to vote as stockholder in corporations. In some states, a trustee may be held personally liable as stockholder even beyond the extent of the trust property.(1)

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(1) Loring, Augustus Peabody; "A Trustee's Handbook", p. 29.

3. As Executor

When a national bank is asked to act as executor, the first step is to petition the court that the will be admitted to probate. A date is then set for the hearing, and all parties interested are notified. Witnesses to the will are required to testify at the hearing as to the validity of it and if the witnesses are dead or unable to testify, then persons familiar with the signatures of both the witnesses and the testator may testify as to their authenticity. If no person appears to contest the will, it is usually admitted to probate.

4. As Administrator

The duties of executor and administrator are practically the same, the only difference being that the executor is named in the will and the administrator is appointed by the court. The legal distinction between the functions of an executor and those of an administrator is that the executor transfers the estate in his charge to the legatees named in the will and the administrator apportions the assets according to the law of distribution.

5. Guardians for Minors, Spendthrifts, Insane Persons and Property of Aged Persons

In Massachusetts there are four forms of guardianship in common use; guardianship of minors, spendthrifts and the insane, and conservators of the property of aged persons.

Chapter 201, Section 3, gives the following rule of law as regards the testamentary guardian:

> "A father or mother may by will appoint, subject to the approval of the probate court, a guardian for a minor child whether born at the time of making the will or afterward, to continue during minority or for a less time. A testamentary guardian appointed by will of a parent shall have the same powers and perform the same duties relative to the property of the ward, and if the other parent is not living, relative to the person of the ward." (1)

National banks are permitted to act as guardian of the estates of minors and wards. In Massachusetts we find no distinction between males and females as concerns the period of minority which terminates when they both reach the age of twenty-one years, which is the day preceding their twenty-first birthday.

It is the duty of the guardian to protect the property of his minor or ward and to apply the income to his support. If the father of a minor is living and able to provide for the minor, he is obliged to support his regardless of the size of the minor's estate. This rule does not apply, however, to the mother, or if it does, it is to a small degree. (2)

In cases where the father of a minor is in moderate circumstances and the estate of the minor is sufficiently large, the court may authorize the sale of certain assets of the minor in order to provide funds for his education.

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(1) Massachusetts Probate Laws, Chapters 188 to 206 inclusive.

(2) Newhall Guy; "The Settlement of Estates of Deceased", p. 461.

(1) Massachusetts Probate Code. Chapters 190 to 209 inclusive.

(2) Newhall Guy: "The Settlement of Estates of Deceased", p. 491.

As to guardians of insane persons and spendthrifts, we find in Chapter 201, Section 6, the following rule:

> "Two or more relatives or friends of an insane person, or the mayor and aldermen of a city or the selectmen of a town in which he is an inhabitant or resident, or the department of mental diseases, may file a petition in the probate court asking to have a guardian appointed for him; and if after notice (as provided in the following section) and a hearing the court finds that he is incapable of taking care of himself, it shall appoint a guardian of his person and estate. A copy of such appointment shall be sent by mail by the register to the said department. The court may require additional medical testimony as to the mental condition of the person alleged to be insane and may require him to submit to examination. It may also appoint one or more physicians, expert in insanity, to examine such person and report their conclusions to the court. Reasonable expense incurred in such examination shall be paid out of the estate of such person or by the county as may be determined by the court." (1)

Section 7.

> "Upon such petition the court shall cause not less than seven days' notice of the time and place appointed for the hearing to be given to the alleged insane person and to the department of mental diseases, except that the court may, for cause shown, direct that a shorter notice be given. No appointment shall be made without such notice to the heirs apparent or presumptive of the alleged insane person, including the husband or wife, if any, as the court may order." (2)

And so we find national banks not only acting in a fiduciary capacity as guardian of the estates of minors but also as guardian of the estates of the insane, spendthrifts, and habitual drunkards. If any of these wards

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(1) Mass. Probate Laws, Chapters 188 to 206 inclusive.
(2) Ibid.

have persons depending upon them for support, provision for their maintenance must be given consideration by the guardian. The term of guardianship depends upon several factors or circumstances among the most common of which is death. In this event, the property is turned over to his legal representative. If the ward recovers and is adjudged sane, his estate is returned to him. (1)

When the guardian of the person of an insane person is discharged by the probate court, seven days' notice of the petition (made by the ward or otherwise) must be given to the department of mental diseases.

National banks as conservators of estates of persons of advanced age or mental weakness have the same powers and duties as when acting as guardians of the estate of minors and insane persons. These powers are under the supervision of the probate court and include the management, sale, or mortgage of property and the payment of debts.

Often one hears of a guardian ad litem or next friend. Perhaps it is proper to insert here Section 34 of chapter 201:

> "If, under the terms of a written instrument or otherwise, a minor or person under disability, or a person not ascertained or not in being, may be or may become interested in any property real or personal the court in which any action, petition, or proceeding of any kind relative to or affecting any such estate is pending may, upon the representation of any party thereto or of any

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(1) Herrick, Clay; Trust Departments in National Banks and Trust Companies, pp. 205, 206, 207, 208.

> person interested, appoint a suitable person to appear and act therein as guardian ad litem or next friend of such minor or person under disability or not ascertained or not in being; and a judgment, order or decree in such proceedings, made after such appointment, shall be conclusive upon all persons for whom such guardian ad litem or next friend was appointed." (1)

6. As Agent

National banks are often asked to act as agent for individuals and corporations possessing real estate. In such cases they collect income, make contracts for repairs and improvements, provide for maintenance and make the necessary disbursements. In such cases, title to the property remains in the owner, and the bank makes a charge for the service.

F. THE CORPORATE TRUSTEESHIP

Another of the trust functions not in contravention of state law is the corporate trusteeships.

Let us delve now into the history of the corporate mortgage which although of rather recent origin is considered one of the most complete and labyrinthine instruments ever conceived by man.

1. History

About the dawn of the eighteenth century, the period known in history as the Industrial Revolution, we find the development of our natural resources, the growth of basic industries, and the extention of railroads calling for more

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(1) Mass. Probate Laws, Chapters 188 to 206 inclusive.

capital than Croesus ever dreamed of possessing. The required financial assistance could not be furnished by a few people and it was necessary to evoke a method by which money could be borrowed from many individuals and groups discretely.

In October, 1864, the Baltimore and Ohio Railroad issued the first corporate bonds secured by mortgage upon the property and franchises of the railroad. The president of the company and his successors were named as trustees.

The New York and Erie Railroad executed the second corporation mortgate of record on July 1, 1847. Some bonds of this issue are still outstanding, maturity having been extended to 1937. In 1849, the first Deed of Trust or Second Mortgage of this company was made to John J. Palmer and others as trustees. Then followed the first refunding mortgage in March, 1853, and on the bonds secured by this mortgage the certificate of authentication made its initial appearance. A fourth mortgage appeared in 1857 and in 1870 the first mortgage to a corporate trustee known as the First Consolidated Mortgage was made to the Farmers Loan and Trust Company of New York. The Bonds secured by this mortgage stated that the certificate of authentication must be signed by the trustee in order to be valid and that provision had been made for the registration of the principal sum of the bond in the name of the holder. In 1874, there

appeared for the first time in a mortgage issued by this company a provision for the redemption of bonds prior to maturity. (1)

And so we learn that the railroads were the first to avail themselves of the services of trust companies as corporate trustees. Prior to this, it was customary to name individuals to act in this capacity, but since corporations were able to offer more advantages, the old custom had to yield to the new. No doubt the strength and prestige of banks had much to do in gaining the patronage of railroads and other large enterprises.

2. Corporate Mortgage

Since vast amounts of capital are continually being required for financing commerce and industry, it is imperative that the borrowing corporations furnish their lenders acceptable forms of security. Perhaps it would be well at this time to tell how such financing takes place.

When the officers of a corporation have been duly authorized to borrow money through the issue of bonds secured by mortgage of certain of its properties, or by the pledge or hypothecation of other collateral, and to employ the services of a certain bank as corporate trusts, they usually employ a competent attorney to draw up and submit for their approval a trust indenture or deed of trust.

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(1) Wisner, Carl, Corporate Mortgage Loan Bulletin of American Institute of Banking, April 1933, pp. 34.

"The phraseology of the deed of trust is formal and usually follows closely adjudicated precedents -- this in order to avoid any uncertainty as to the judicial interpretation of the language employed." (1)

Hardly two corporate mortgages will be found alike as to their terms but the following features are common to nearly all:

1. The date of the mortgage.
2. The name of the corporation (the party of the first part).
3. The state or incorporation.
4. A statement as to whether the corporation was organized under the general corporation act or by special legislation.
5. The name of the trustee (the party of the second part) who is to hold title to the property pledged or mortgaged to secure the bonds.
6. The preamble, stating that the loan has been duly authorized by the stockholders and directors, that the necessary legal requirements have been complied with, the purpose of the loan and its legal status, (whether first or second mortgage).
7. An exact copy of the bond, coupon, and trustee's certificate.
8. The "granting clause" transferring the mortgaged property to the trustee.
9. A description of the property.
10. The "habendum clause" describing the character of the property granted by the mortgage.
11. The declaration of trust.

"The declaration of trust is usually divided into a number of clauses, each dealing with a

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(1) Conyngton, Thomas; Corporation Procedure, Revised by Hugh Conyngton 1927, p. 523.

particular situation. It includes the covenants of the corporation, such as to keep the mortgaged property insured, to pay taxes, and properly to maintain the value of the security; a statement of the duties and remedies of the trustee in case of default by the corporation; provision for the redemption of bonds, if that is one of the features of the mortgage; provision for the release of portions of the mortgaged property in case of sale; for the issue of additional bonds upon the acquisition of additional property or for new construction; for the registration and exchange of bonds; and any other provisions which may be appropriate to the mortgage. The trustee is usually not required to take any action in the case of default by the mortgager, unless requested to do so by the holders of a certain proportion of the outstanding bonds, generally from 10% to 25%." (1)

With the trust indenture properly approved, the officers of the borrowing corporation present the document to the corporate trustee for approval and acceptance.

"Administration of the 'Corporate Trust' is one of the important responsibilities assumed by the modern trust company. The corporate trustee represents the mortgagor company on the one hand and the bondholders on the other. Acceptance of a corporate trusteeship, however, does not involve the trust company's approval of the bonds or notes to be issued or any assumption of responsibility as to their validity or value and does not warrant any selling statements to this effect. In other words, it is not a 'guarantee of value' for which the trust company vouches -- it is identification of the security, assuring the purchaser that the bond or note which he is about to buy is one of the issue referred to in a trust agreement under which the issue is made. The usual certification by the trustee merely states that 'this bond is one of the series referred to in the within Deed of Trust,' or words to that effect. People not familiar with financial matters of this nature rely on the name of the trustee and believe that its signature is more or less a guarantee of the standing of the mortgagor company. While it is

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(1) Montgomery, R. H.; Financial Handbook, p. 1554.

(1) Montgomery, F.-H.: Financial Handbook, p. 1864.

> not the province of the trustee to pass upon the intrinsic merit of the investment it is of course very important that the trust company should discriminate in accepting this class of business." (1)

Before accepting a corporate trusteeship, the bank should have its counsel and trust officer examine and review the mortgage draft. To the counsel should be delegated the legal aspects and to the trust officer the surveryance of the form of the bond, its provisions as to delivery and sinking fund operations.

Prior to the acceptance of a trusteeship, the prospective trustee must require many certified documents and much detailed information from the borrowing corporation, such as:

1. Authorization to mortgage the property.
2. Authorization of the officers of the bank to execute the trust indenture.
3. Certificate of incorporation of the mortgagor corporation.
4. Copy of the articles of incorporation together with any amendments.
5. Copy of the by-laws with all amendments.
6. Description of the property to be mortgaged.
7. The last balance sheet of the mortgagor properly certified.
8. Copies of minutes bearing upon the mortgage.
9. Specimen signatures of officers who are to sign the mortgage, bonds, and coupons.

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(1) Burrage, Francis J., Secretary Boston Safe Deposit and Trust Co.; "Precautions to be Observed in Accepting Corporate Trusts" in "Trust Companies" Vol. 37, p. 560.

10. Copies of any other mortgages and trustee's certificates stating amount oustanding.

11. When required by law, a certificate of approval of the issue secured from the State Public Service Commission.

12. Statement from the mortgagor's counsel to the effect that the proceedings authorizing the mortgage, bonds, and coupons have been as directed by law; that the corporation has been legally incorporated under the laws of its state; that the mortgage, bonds, and coupons when duly executed will be regular and binding; that due consideration has been given to the laws of other states in which the mortgagor owns property; that the title held by the mortgagor is good and that the mortgage will constitute a valid lien.

13. After the mortgage has been filed, a certificate will be furnished the trustee.

"Since New York City is the chief market in America for floating bond issues, it is natural that a considerable part of the large New York banks' corporate trust activities should be devoted to handling trusts created by mortgages or trust indentures made to secure bond issues.

"In a transaction of this sort the borrowers vest the trustee with title to property for the benefit of security holders. The property involved may consist of securities, or of real estate or equipment; or it may be in other forms. If the assets pledged consist of securities, the mortgage is described as a 'collateral trust.' The securities pledged are put in negotiable form or registered in the name of the trustee. The duty of the trustee is to carry out the provisions of the mortgages. If substitutions of collateral are permitted the trustee takes note that the security of the issue is preserved. Collateral trust mortgages usually provide that the borrowing corporation shall maintain a certain margin of collateral. In the interests of the security holders, the trustee, if occasion requires, calls attention to this requirement. In handling mortgages other than collateral trusts the borrowing corporation retains possession of the property pledged, so long as it complies with

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> the terms of the trust. In case of default under either type of trust, however, it becomes the duty of the trustee to act in the interests of the security-holder in such manner as the mortgage may direct." (1)

Bearer bonds with coupons payable semi-annually are more popular than the fully registered bonds due to the facility with which they can be transferred. Bonds usually provide for the registration of the principal but very few holders avail themselves of this service.

Most trust indentures contain provision for a sinking fund. "A sinking fund is a fund of assets accumulating at compound interest for the purpose of paying a liability at its maturity." (2) Conditions as to payments to the fund vary with every mortgage. Some call for periodical fixed cash payments, others for the retirement of a definite amount of bonds yearly after the elapse of a certain number of years, etc. Bonds which are purchased from sinking fund cash are usually cancelled but they may be kept alive and in such case the income may be added to the sinking fund.

Practically all indentures specify that the mortgagor is required to deposit all insurance policies with the trustee and riders should be attached to these policies stating that losses are payable to the trustee as his interest may appear.

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(1) Langston, L.H., Editor; "Practical Bank Operation," Vol. II, pp. 494-495.
(2) Finney, H.A.; "Principles of Accounting, Vol. II. Chap. 37, p. 5.

> "The trustee should also have a specific provision put into the mortgage for the substitution of property at any time it seens necessary. It is also desirable to have provision made for a company to borrow additional funds. Failure to obtain additional funds may cause the property to decline in value and weaken the bonds, whereas the additional funds might give greater security. The practice of issuing open-end mortgages takes care of the need for additional funds, for under a closed mortgage real difficulty may arise if the proper agreement is not made. The mortgage instrument also provides that the report of engineers and accountants employed by the trustee will be acceptable and that the advice of attorneys that the corporation is fulfilling the requirement of the mortgage will be sufficient evidence to the trustee that the contract is not being broken." (1)

In case of default, the trustee should be empowered to declare the principal due provided it is impractical to take possession or assume operations for the benefit of the bondholder; and to foreclose and sell the property and to deliver a good and legal conveyance.

> "One problem which has become increasingly important of recent years concerns lost or stolen bonds. Trustees are called upon to certify duplicate bonds or bonds which have been issued against others which have been lost or stolen or which, at any rate, cannot be located by their owners. Until quite recently most mortgages provided only for the issuance of duplicates against bonds which had been lost, mutilated or destroyed. However, counsel for several large trust companies have held that the meaning of the word stolen is not embodied in the word 'lost' and that the trustee should be justified in issuing a duplicate of a stolen

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(1) Trant, James B., Ph.D., Professor of Banking and Dean of the College of Commerce, Louisiana State University; "Bank Administration", pp. 315, 316.

> bond only if the word 'stolen' appears in the appropriate provisions of the mortgage. While there is some difference of opinion on this point, it is one which the trust officer should have in mind in his examination of the mortgage." (1)

After the approval of the trust indenture by the trustee's attorney, trust officer, and board of directors, the trustee should direct attention to the circular offering the bonds for sale; for the statements appearing on the circular should coincide in all respects with the facts contained in the indenture.

If the bonds are to be issued for a long term and are to have a general market, the trustee should see that the paper to be used by the engraving firm is of the best quality. The financial responsibility of the engraving concern is also a matter of importance.

The trust indenture, being a formal document, must be executed with the same formality as a deed of real property. That is, it must be signed, sealed, and acknowledged. The president of the borrowing corporation usually affixes the corporation's signature together with its seal. The secretary of the corporation then attests it. The instrument is usually acknowledged by the president of the company but it is equally effective if acknowledged by the corporation's secretary. It matters not whether the trust

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(1) Gates, Payson G., Associate Secretary Bankers Trust Company of New York Trust Companies; "Guiding Points to be Observed in Acceptance of Trusteeship Under Corporate Mortgages" in "Trust Companies" Vol. 44.

indenture is executed within the state of incorporation or not, but if real estate is included in the instrument, then it must be filed in the office of the county clerk in every county in which the real estate is located.

At maturity, the mortgagor corporation should provide the trustee with the necessary funds with which to pay the outstanding bonds. Often many of the bonds will not be presented at maturity and may remain in the hands or strong boxes of holders for quite some period of time. However, bonds as paid should be canceled and the trustee must retain funds equivalent to bonds not presented for payment. The trustee's next duty is to release the security to the borrower, release the liens recorded, cancel and destroy the retired bonds.

3. Transfer Agent

Before national banks assent to act as transfer agent, that is, as agent to record the transfer of stock, they require that certain documents be filed or submitted to them. These documents are similar to the ones required before accepting to act as registrar. They include a copy of the certificate of incorporation, certified to by the secretary of the state in which the corporation was incorporated, a resolution of the board of directors appointing the bank as transfer agent, copy of the by-laws, certified by the secretary of the corporation, formal signatures of the officers of the corporation authorized to

sign the stock certificates, a certified list of the stockholders of the corporation existing at the time the transfer agency is given to the bank, or stock ledgers and transfer records proved to the date of turning them over to the bank.

In the case of a new corporation, the transfer agent would receive stock subscriptions and issue stock certificates when subscriptions were paid. When the installment plan is employed, interim receipts are issued to the subscribers until the final payment is made. The transfer agent should be familiar with the rules in regard to bankruptcy, the powers and authority of executors and administrators, guardians, etc. He should be able to interpret wills, deeds, and know the laws relative to taxes and transfers.

> "Banks and trust companies owe it to the public and to their own reputations to exercise reasonable care in the acceptance of transfer agencies. They should satisfy themselves that the proposition is a legitimate one, is honestly conceived, and is under the management of persons of good standing -- in other words, that no fraud is associated with the proposition. While it is true that the transfer agent undertakes no legal responsibility whatever regarding these matters, it is also true that in the eyes of the public it may be held to a certain moral responsibility to refuse to lend its name to any enterprise which is not promoted in good faith." (1)

It is customary to appoint national banks or trust companies as transfer agent but a corporation may act as its own transfer agent or appoint an individual to act in

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(1) Herrick, Clay; Trust Departments in National Banks and Trust Companies, p. 247.

that capacity.

Transfer agents must keep accurate records of the names and addresses of stockholders, and the number of shares held by each. They must see that certificates presented for transfer are properly endorsed and supported by any required documents and that all necessary transfer tax stamps are affixed and cancelled.

The massiveness and voluminous detail of some transfer operations may be seen in the accomplishment of the Corporation Trust Company of New York as transfer agent for the Radio Corporation of America in February, 1933. On November 21, 1932 the United States District Court for the District of Delaware had decreed that the General Electric Company and the Westinghouse Electric and Manufacturing Company must divest themselves of one half of the common stock of the Radio Corporation of America within three months from the date of the decree and the remainder within three years.

The Corporate Trust Company had 6,040,782 shares of Radio Stock to transfer out of the names of General Electric and Westinghouse into the names of the individual stockholders of these two companies in proportion to the holdings of each. There were 224,373 names to be checked against the stock ledgers of Radio. New stock ledger accounts had to be opened; 238,000 new certificates had to be issued and delivered to the Registrar for registration.

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The desirableness and reliability of some transfer operations may be seen in the accomplishment of the Corporation Trust Company of New York as transfer agent for the Radio Corporation of America in February, 1928. On November 21, 1922 the United States District Court for the District of Delaware had decreed that the General Electric Company and the Westinghouse Electric and Manufacturing Company must divest themselves of one half of the common stock of the Radio Corporation of America within three months from the date of the decree and the remainder within three years.

The Corporate Trust Company had 8,000,000 shares of Radio Stock to transfer out of the names of General Electric and Westinghouse into the names of the individual stockholders of those two companies in proportion to the holdings of each. There were 220,000 shares to be charged against the stock ledgers of Radio. New stock ledger accounts had to be opened; 538,000 new certificates had to be issued and delivered to the Registrar for registration.

Certain of the holders of General Electric (163,928) and certain holders of Westinghouse (22605) had to have receipts issued for fractional shares. Each of the final 224,373 pieces of mail had to be registered in duplicate with the Post Office. Forty-seven thousand dollars ($47,000) was needed for postal fees and two hundred forty-one thousand six hundred thirty-one dollars and twenty-eight cents ($241,631.28) for Federal Transfer Tax stamps.

The decree was issued November 21, 1932. The list of General Electric stockholders was in December 15, 1932 and the work started then. The list of Westinghouse stockholders was not complete until January 23, 1933. The court set the definite date of February 20th as a date for change in ownership of stock.

The Corporation Trust Company was able to handle this enormous job without hindering its regular business. Two hundred people were used at once from various of the company's offices.

In the first minute of February 20, 1933 a fleet of specially guarded mail trucks started out and 6,040,782 shares of stock started en route to their new possessors.

Such is the task of the transfer agent. (1)

4. Registrar of Stock and Bonds

Coincident with the growth of large corporations

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(1) An Achievement in Transferring Over Six Million Shares of Radio Stock in Trust Companies, March 1933 issue, pp. 368-369.

was the vast increase in the shares of capital stock so that it became necessary to devise a method of protecting investors from over issues of stock.

> "In 1846, the New York, New Haven, and Hartford Railroad Company was incorporated with a capital stock of $3,000,000 and Robert Schuyler was a director and president of the company. To him was delegated the transfer agency for the stock of the company. He held this position from 1846 to 1854, and beginning in October 1848 he began fraudulently to overissue the stock of the corporation and continued to do so until his resignation in 1854; so that by that time the total amount of overissue was about $2,000,000. While the court held that an overissue of stock is illegal and void, it was granted that a suit in equity would lie against the corporation for an innocent purchaser of such fraudulent certificates. The only remedy was an action against its agent Schuyler. A series of costly litigations running over a period of ten to fifteen years resulted. The need for a transfer agent of a very high degree of responsibility was thus dramatically emphasized and the trust company offered itself as such an agency." (1)

In order to prevent the further perpetration of fraud, the New York Stock Exchange in January 1869 adopted a rule requiring that all active stocks be registered by an approved agency and that the agency be one other than the corporation and its officers.

Many leading attorneys recommend that all bond issues, whether listed on the stock exchange or not, should conform to the requirements of the New York Stock Exchange.

> "The registrar certifies that the amount of stock outstanding at all times will not exceed the number of shares authorized and

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(1) Smith, James G.; The Development of Trust Companies in the United States, p. 292.

> issued by the corporation. Its interest lies in the total shares, not in individual holders. It signs on the new stock certificate after examining the old one and comparing the number of shares represented with its registry list. Since the registrar should act as a check upon the transfer agent the New York Stock Exchange will not permit the same trust company to serve in both capacities for any one corporation." (1)

The rules of the New York Stock Exchange also require that the registrar be a bank or trust company and that the corporation whose shares are admitted to dealings upon the Stock Exchange establish and maintain a transfer agency and registry office in the Borough of Manhattan, New York City.

Before accepting the appointment as registrar, the bank should have its counsel and trust officer carefully survey the contract and obtain all necessary data as to the authority of the issuing corporation to appoint it as registrar and satisfy itself that it is a responsible and reputable concern.

The registrar upon acceptance of the appointment is handed a certified list of the oustanding stock. This list is arranged numerically as to certificate numbers and contains the names of the stockholders and the number of shares represented by each certificate.

5. Fiscal Agents

In acting as fiscal agents national banks perform

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(1) Steiner, W. H., Ph.D.; Money and Banking, p. 498.

many and varied services. They may act as fiscal agents for the payment of coupons or interest on registered bonds and fiscal agents for the payment of dividends on stock. It is customary for the banks acting as trustees for bond issues to perform the service of acting as fiscal agents for the payment of interest on bonds and for those acting as transfer agents for stocks to have charge of dividend payments.

> "In the colonial days, as already noticed, some of the colonies had General Loan Offices or other agencies for the issue of paper money. The trustee in charge of the early colonial banks (if they may be so called) were given the duty of acting as fiscal agent for the colony. In the early days of our banking history one of the most important duties of the First Bank of the United States was to act as fiscal agent for the federal government. The Second United States Bank performed a similar service. In 1818 the Bank of Manhattan Company was appointed as fiscal agent for the state of New York and still continues in that capacity. Banks in general have, from the beginning of their history, performed paying agency and collecting agency service." (1)

As a rule, the funds required for the payment of interest or dividends are deposited by the paying corporation in the bank of the fiscal agent in a special account under some such caption as "Funds for the Payment of Bonds and Coupons." Some corporations, however, give the fiscal agent power to charge matured bonds and coupons to their deposit account.

The employees of the fiscal agent must be familiar

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(1) Smith, James G.; The Development of Trust Companies in the United States, p. 290.

with all issues under their contracts, know their maturity dates, dates interest payments must be made, their serial numbers and callable provisions. They must see that checks in payment of interest on registered bonds and dividend checks are paid on time. They must be on the watch for stop payments placed against coupons as well as forgeries.

> "Coupons presented for payment are usually enclosed in the paying agent's own particular style envelope. For this purpose the various banks of the city which handle quantities of coupons keep on hand a supply of envelopes furnished by the paying agent. This envelope shows the name of the issuing company, number and amount of coupons enclosed, and the total amount. Time is required to make examination of the material presented for payment and to issue the necessary check; hence payment is not made immediately upon presentment. The bearer of the envelope containing coupons is given a numbered identification receipt. The number of the receipt is stamped on the coupon envelope and serves to distinguish the transaction from others in process. Later the bearer exchanges his receipt for a coupon check covering the amount." (1)

Dividends are paid in accordance with the dividend list submitted by the transfer agent. The transfer agent and fiscal agent may be the same bank.

6. Assignee and Receiver

Often national banks and trust companies are asked to act as assignee or receiver for financially embarrassed individuals, firms, or corporations. In such cases, it becomes the duty of the receiver or assignee to protect

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(1) Langston, L. H., Editor; Practical Bank Operations, Vol. II, pp. 494-495.

the interests of creditors. If the business must be liquidated, the assets should be collected and sold, and the proceeds distributed among creditors whose claims have been properly proven. If it is necessary to carry on the business for an indefinite period in order not to suffer too great a loss in liquidation, the assignee or receiver must take charge of these operations.

> "The trust company may act as assignee for an embarrassed concern or may be appointed by a court as receiver for an insolvent one. Due to abuses in bankruptcy administration under the Federal Law, in certain leading cities, such as Chicago, Detroit, and New York the courts have followed the practice of appointing as receiver a trust institution which has organized a special department to care for the work. In New York, that is, the Irving Trust Company has been appointed in all cases since January, 1929. But in bankruptcy administration if a trustee succeeds the receiver, the creditors in any case may select a private trustee to take over the administration from the corporate receiver. And the legal profession has strongly opposed the appointment of trust institutions as receivers." (1)

7. Escrows

The term "escrow" is used to describe an arrangement whereby each party to a certain agreement delivers property to a depositary to be transferred at a later day to another party or parties upon the fulfillment of certain conditions.

Escrows are usually divided into two main classes:

1. Those involving personal property.

2. Those involving real estate.

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(1) Steiner, W. H., Ph.D.; Money and Banking, p. 498,499.

For many years trust companies and national banks have handled escrows covering personal property in the form of deposits of stocks, bonds, articles of jewelry, etc.

In the boom period prior to 1929 some escrows involved large deposits of real property (made by corporations engaged in reorganizations, mergers, and consolidations) due to the necessity from time to time to release property for transfer and sale upon which liens existed.

> "Banks and trust companies are handling real estate escrows in increasing numbers each year, but the largest number are handled in the offices of the title insurance companies. These companies maintain title plants where the filing of instruments can be checked and the records searched to the very minute of closing the escrow. They have their own title examiners who examine the instruments to see that they are in order and inasmuch as they are responsible for the title make their searches and file all instruments so that no liens may attach affecting the title of the purchaser or the liens of the mortgage. Most title insurance companies maintain an up-to-date title plant and all instruments filed with the County Recorder, or with any other officer authorized to accept instruments, are being continuously posted against the individual properties affected so that the title companies' records are always within a few hours of showing everything filed for record. The title insurance companies also maintain a force of employees in the courthouse, city hall, and other public offices where they may be reached by telephone on a moment's notice and instructed as to obtaining tax or lien statements, thereby facilitating the closing of deals.
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> "Many of the title insurance companies are expanding their organizations so as to render to the banks and trust companies without title departments special service in reporting titles and record searches that they will also be able

to render practically as prompt and efficient escrow service as the title insurance companies can in their own offices." (1)

In assuming the responsibility under an escrow agreement consideration should be given not only to the conditions under which the property is to be received and held but also to the disposition of property in event of default.

8. Agent

Often national banks are appointed agent for individuals, firms, and corporations. These agency accounts are usually created by an agreement which definitely sets forth the work to be done. Some agencies exist for the purpose of collecting income, and safe-guarding securities; others are of the custodian type which render additional services such as caring for real estate, making disbursements, and preparing tax returns.

G. PERSONNEL

The success of a trust department depends to a large degree upon the character of its members.

1. Trust Officer

The trust officer is appointed annually by the board of directors and should be a person of unsurpassed integrity, possessing the necessary qualities of sincerity, understanding, tact, and urbanity, in addition to a

(1) Grutze, A. W., Approved Methods of Handling Escrows, in Trust Companies, Vol. 45, pp. 188, 189, August 1927.

background of broad culture, excellent specific training, and wide experience.

The duties of a trust officer vary according to the amount of trust business handled by the bank. In some national banks the entire time of the trust officer is devoted to consultations with the trust committee, trust accountant, and to interviews with clients and prospective clients.

The development of trust business is a slow process and in the early years of the trust department's existence it is a Gargantuan infant in the arms of the bank. This is one of the reasons why the average national bank fails to attract the services of able individuals for remuneration which is by no means commensurate with the degree of service required and rendered. If one scans the list of bank officers, where does he find the trust officer's name? The answer is, -- on the tail end.

2. Trust Accountant

Let us next direct our attention to the trust accountant. Often a certified public accountant holds this position and if not certified, the accountant should be the possessor of an ample education in accountancy coupled with training and experience. For often in small banks we find the holder of the title "trust officer" to be a mere figure head, appointed through influence, leaning on the trust accountant as one would on a crutch and that with-

out due credit.

To the trust accountant are entrusted the books and records of the trust department. He has supervision over the clerks engaged in the accounting department, prepares, supervises, and certifies various reports and income taxes.

At this point may I comment on the rigorous honesty and probity I have always noticed about the employees of banks. One might forget a valuable ring on the wash stand or leave a pocket book by mistake on a desk or table -- where I was employed -- go home at night and sleep soundly, knowing that in the morning the article would be safe. This honesty makes the petty thieveries in other institutions (i.e. libraries) seem appalling to the novice previously cloistered in the scrupulous bank.

3. Trust Committee

The trust committee is appointed by the board of directors from members of the directorate and usually comprises lawyers, investment brokers, realtors, and persons of acute financial sense.

The trust committee meets periodically and discusses with the trust officer trust department activities in general. They pass upon proposed investments, go over the list of securities held in the various trusts, request that certified balance sheets and profit and loss statements be presented by some of the corporations whose stocks or bonds are held, and make recommendations for their retention

or disposal. Past due payments of income are also referred to this committee.

4. Arrangement of Trust Department

"As to detailed physical arrangement of your office equipment, little may be added to that which common sense may dictate except perhaps that a suitable arrangement of tellers' windows and cages is preferable wherever possible to an array of flat top desks and swivel chairs. Country clients must find in the trust department of the big city a welcome atmosphere free as much as possible of bewildering mazes. No customer enjoys the embarrassing experience of being referred from one desk to another, or from one floor to another before he attains the object of his search.

"The ideal divisional arrangement of the trust department is important; it presupposes a thoroughly competent trust man, familiar with every phase. The probate division or division of estates should be in charge of a trust man at least an assistant officer, who has an especially intimate knowledge of probate procedure and not merely a lawyer who views the business solely from the legal viewpoint. The division of personal trusts -- should likewise be in charge of a thorough trust man who understands securities and trust matters, not the management of a former employee of a bond house. The division of corporate trusts -- trusteeships -- under bond issues -- should likewise be presided over by a trust officer who understands particularly well the niceties of corporate finance and the necessary accounting procedure -- not by one who has had only an investment banker's experience." (1)

5. Education for Executive Trust Positions

There is a wide field for executives in trust positions in this world today as conscious of its economic

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(1) Kieferdorf, W. J., Ideal Organization of Trust Department as the Personnel Operations and Equipment in Trust Companies, October, 1926, page 420.

pains as a man of a toothache. There should be more training opportunities in this vocation, not only in the actual technique of fiduciary subjects or the specialized legal knowledge necessary for efficient trusteeship, but in the ethics and developmental potentialities for service and business leadership in the profession.

H. TRUST ACCOUNTING PROCEDURE

1. Personal Division

A national bank in acting as executor should file the will of the testator together with a petition (made out on one of the regular probate forms) in the probate court for the county in which the testator lived. The petition should contain the sworn signature of the executor and should recite the date of the testator's death, the existence of a will (and codicil if any), the name and address of the surviving husband or wife, and the name, residence and relationship of each of the heirs and next of kin. If any heirs are minors, this fact should be declared and the name of their guardian, if any, disclosed. The petition requests that the will be allowed and that the petitioner be appointed executor. If the surviving husband or wife and all the heirs assent to the proceedings they should affix their signatures to the petition. In Massachusetts national banks acting as executors are exempt from furnishing a bond unless the court requires it.

In the event that the executors named in the will

have passed on or decline to serve, or if no executor is named in the will, a different form of petition is used; that is, a petition for the appointment of an administrator with the will annexed.

a. Recording

> "Upon the filing of the petition, a notice, or as it is technically called, a 'citation', is issued by the court notifying all persons interested to appear at a day named (known as the 'return day'), and show cause if any they have, why the petition should not be granted. This citation must be served in the manner prescribed by the court. In some cases it calls for personal service. This means delivering a copy to every person interested. The court may, however, permit or direct the service to be made by registered mail, which is of course much easier. Probate citations cannot be served by leaving at the last and usual place of abode. In other cases the citation calls for 'publication' or 'publication and mailing.' This means publishing the citation in the newspaper named therein once each week for three successive weeks, the last publication to be at least one day before the return day. The publications need not necessarily be one week apart. Usually the petitioner may select the newspaper. If the citation calls for publication and mailing, then a copy cut out of the paper should be mailed to each person interested (registered mail not necessary), usually seven days (sometimes fourteen) days before the return day. In such a case it is necessary only to prove the mailing of the notice; actual receipt need not be shown. If all persons interested assent in writing, or waive notice, or voluntarily appear in court, the citation or service of it may be dispensed with, except, as will appear later, where the petitioner desires to be exempt from giving sureties on his bond, in which case there must always be publications."(1)

After the citation has been served, the bank's attorney or trust officer files with the probate court an

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(1) Newhall, Guy; The Settlement of Estates of Deceased, pp. 4, 5.

affidavit (on a printed form supplied by the register of probate) to this effect. The bank's representative may attend probate court on the return day and if no appearances in oppositions have been entered, he may request the court to allow the petition or he may wait for another day.

Proof of will may be made to the judge of probate in one of three ways:

1. By the appearance of one of the attesting witnesses to the will. If all the witnesses have died or are not within reach, or have become incompetent, their signatures may be proved.

2. By one of the witnesses making a written affidavit before the register of probate disclosing facts concerning the execution of the will.

3. By written assent of all interested parties, that is, the surviving husband or wife and all the heirs and next of kin, to the allowance of the will, thereby requiring no testimony.

The petition for the allowance of the will contains the petition for the appointment as executor.

As soon as the bank receives its appointment it must give formal notice as required by law.

> "An executor or administrator shall within three months after giving bond for the performance of his trust, cause notice of his appointment to be posted in two or more public places in the town where the deceased last dwelt; or he may be required by the probate court to give notice by publication in a newspaper, or in such other manner as the court orders." (1)

After notice has been given, an affidavit to this effect should be filed immediately at the registry of

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(1) Massachusetts Probate Laws; Chapter 195, Section I.

probate.

> "The giving of this notice and the filing of the affidavit are very important, and should be attended to without delay. The effect is to start the running of what is known as the short statute of limitations, limiting the time within which creditors may bring suits on their claims. The estate cannot be finally settled until this statutory period has elapsed, and it does not begin to run until the notice has been given and the affidavit filed. If this duty is properly attended to, the statute begins to run from the date of the appointment of the executor or administrator. An executor or administrator who fails to give notice and file the affidavit may incur personal liability to those interested in the estate, if they suffer in consequence of his neglect." (1)

Within three months from the date of its appointment as executor, the bank should file an inventory of the estate of the testator under oath with the probate court. The Massachusetts law provides for the appointment of three appraisers or one appraiser alone, at the discretion of the court. The inventory should show items and values and include both real and personal property together with any advances made by the decedent during his or her life to heirs or legatees under an agreement that they shall be considered a part of the estate. Any assets considered to be valueless should also be included in the inventory as well as any income legally belonging to the estate.

Perhaps it would be well to quote here the rules as to the apportionment of income in Massachusetts which

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(1) Newhall, Guy; The Settlement of Estates of Deceased, p. 80.

probate.

play such an important role in the preparation of inventories.

> "In considering the question of apportionment of income, care must be taken to distinguish between two classes; first, those where the question arises on the death of the owner of the property and second those where it arises on the death of some person who is entitled to the income during his life.
>
> "The rule applicable to the second class of cases is the simpler, because it is statutory. It is that where a person who is entitled to an annuity, rent, interest or income for life dies between the days upon which it is payable, his executor or administrator is entitled to have it apportioned so that the part which accrues up to the date of his death will be assets of his estate. This includes the ordinary forms of income such as rents, interest on mortgages, and interest on bonds whether coupon or otherwise. It does not however include dividends on stocks in corporations. These are subject to a special rule. They are not apportionable as to time under any circumstances, but go to the person entitled to the income on the date the dividend is declared. If a dividend is expressly declared to cover a particular period, it will go to the person entitled thereto at the close of the prescribed period, regardless of the date when it is declared.
>
> "In dealing with the first class of cases, however, we find an entirely different rule. The apportionment on the death of a life tenant is almost wholly by virtue of the statute, and there is no such statute applicable to income upon various forms of property owned by the deceased person at the time of his death. At common law, apart from statutes, the rule was that income payable at fixed periods was not apportionable. Thus, if the deceased was the owner of shares of stocks, bonds, (whether coupon or otherwise), annuities, or any other investments, the income of which was payable at either fixed or uncertain periods, the entire income falling due after the death of the owner would go without apportionment to the person entitled thereto. In the ordinary case the executor or administrator would take this income anyway, so

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that no question would arise, except as to the value of the estate for purposes of computing the inheritance tax. If, however, the income was to go to a life tenant, he would get the whole of it, and no part of it would be carried to the account of principal by any process of apportionment. A common illustration of this is a savings bank deposit. Such deposits are always inventoried (or should be) as of the amount due at the last declaration of dividend preceding the death of the owner, with no allowance for additional interest accruing to the date of death. The only exception to the foregoing rule at common law was interest on an overdue debt, whether secured or unsecured. The theory of this was that interest on an overdue debt accrues from day to day, and accordingly the value of such debt should be estimated with interest figured to the date of the death of the creditor, the life tenant receiving only the interest which accrued thereafter.

"The common law rule as above expounded prevails in Massachusetts, with some further exceptions established by judicial decisions. It is now held that in addition to interest on overdue debts, interest on promissory notes not due at the testator's death, whether issued by individuals or corporations, and whether secured or unsecured, are apportionable. This does not apply, however, to coupon bonds and investment securities put out by public authorities and corporations and sold in the market for investments. These are still not apportionable.

"Rents from real estate require special discussion. If they are due under a written lease the foregoing rule applies and the entire rents due on any rent day go without apportionment to the person then entitled. If there is a trust with a life estate they go to the life tenant. If there is no trust, they go to the heirs or devisees. Rents due from tenants at will, however, would be apportioned since the death of the lessor terminates the tenancy, and under the statute such rents would be apportionable as to the date of the death.

"The rule above laid down as to the non-apportionment of assets on the death of the owner may be somewhat qualified in some cases by the

> requirements of the inheritance tax law. The inheritance tax is based upon the value of the estate at the date of the decedent's death. Accordingly, if for example a coupon bond has an added value by reason of the accrued interest, presumably this must be considered, even though technically the coupon is not apportionable." (1)

Although real estate passes directly to the heirs of the testator and directly to devisees, nevertheless, it is advisable for the executor to include it in the inventory in order to meet the state inheritance and federal estate tax law requirements. If there is not sufficient personal property to pay the debts of the estate, the bank may then apply to the court for permission to seel some of the real estate. In this case, the title to the real property passes to the heirs subject to an obligation to convey title to the vendee and this claim of the vendee's is personal property and passes to the executor. Proceeds of life insurance when payable to the estate are turned over to the executor as part of the assets of the estate; proceeds of policies payable to the beneficiary are paid directly to the named beneficiary.

The inventory, now ready for presentment to the probate court, should be recorded on the trust department books.

Amont the individual trust books is a trust department ledger which contains four main sheets for each estate

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(1) Newhall, Guy; Settlement of Estates of Deceased, pp. 89, 90, 91, 92.

or trust. The first sheet is called the "inventory sheet" and provides for the recording of all information relative to the particular estate or trust. The second sheet is known as the "principal sheet" and is designed to record all principal transactions. The third sheet is the "income case" sheet and serves as a record for all cash receipts and disbursements of income during the administration of the estate or trust. The fourth and last sheet, known as the "investment ledger," contains an account for each asset.

A copy of the inventory is then given the trust accountant. This document serves as the basis of the opening entry on the books of the estate. Therefore, it should be entered on the inventory sheet and the value of each asset shown in the debit column. The value of the total assets should appear in the credit column. If the inventory contains an item for "cash" the amount of this cash should be entered as a debit in the principal cash section of the "principal cash sheet," the total of the other items should be entered as a debit in the "Investment section" of the principal sheet and the sum of the debit to "principal cash" and the debit to "investments" should be carried to the credit column of this same sheet. This credit should agree with the figure which represents the total or footing of the inventory sheet. The detailed item contained in the inventory sheet, with the exception of cash, should be

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posted as debits to their respective accounts which have been opened up in the investment ledger otherwise known as the fourth sheet. The sum of the open accounts as disclosed by this ledger should agree with the balance as represented by the investment column of the principal sheet.

If any contracts entered into by the deceased have not been fully performed at the time of his death, the executor must either attend to the performance of such contracts or respond in damages. As a rule, an executor has no authority to continue the business of the testator and if he does so on his own accord, any losses incurred in so doing will have to be paid out of his own pocket. However, if the will authorizes him to operate the business, he can do so but is still personally liable on any contracts.

When the bank as executor has cash on hand which will not be required to be distributed for some time, it should invest it in securities as approved by the trust committee.

b. Investments

If the estate of the testator contains investments of a speculative nature, the executor may sell them and apply the proceeds toward the purchase of securities as recommended by its committee. If there is any doubt as to such procedure instructions may be secured from the

probate court.

> "An important consideration into the sale of real estate for the payment of debts and legacies has to do with the principle known as the marshalling of assets. Thus, the usual rule is that the personal property shall be used first to pay the debts and legacies, and after that, the real estate. In any event, both the personal and real estate will be used, if necessary, to pay debts, but not necessarily to pay legacies and not necessarily in that order. For example, if there is a will, the testator may provide that the real estate shall be used first, rather than the personal property. Likewise, he may make specific bequests of some of his personal property, in which case the balance of the personal property and such real estate as passes under a residuary clause or is undisposed of at all, would be used before the personal property specifically bequeathed. The question is full of difficulties and must be settled by the court, having before it all the facts. In general, it may be said that property, real or personal, which is specifically devised or bequeathed, will not be used to pay debts until after the property not specifically devised or bequeathed has been exhausted. Likewise, no property specifically devised or bequeathed will be sold to pay other legacies not specific." (1)

In order to seel real estate the executor must petition the probate court for a license. This petition should disclose the amount of the outstanding debts, the amount of legacies, personal property on hand, cost of administration and a description of the property he desires to sell. The petition should also specify whether the sale is to be public or private and if private, the amount offered by the prospective should be made known.

Having received the license, if the sale is to be

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(1) Newhall, Guy; The Settlement of Estates of Deceased, pp. 117, 118.

probate court.

at public auction only, the executor must then give the necessary notice, conduct the sale, and make a return to the court called for by the terms of the license. If the license permits him to sell at private sale, he may sell on the terms as stated in his petition or for a greater sum if such is possible, or he may even sell at public auction. However, the sale must take place within one year of the license and the deed of conveyance given within that time.

All expenses incurred subsequent to the death of the decedent should be segregated as to principal and income.

c. Reports

Several forms of taxation must be attended to by the executor; namely, local taxation, Massachusetts legacies and successions tax (levied on the net amounts passing to the various beneficiaries), Massachusetts income tax (applying to income received by the deceased during the last year of life to the date of death and the income received subsequently by the executor), federal estate tax (similar to the Massachusetts inheritance tax effecting only those estates running over $100,000), federal income tax, and transfer taxes on stock of corporations incorporated outside of Massachusetts and levied by such states.

From time to time (usually in large estates) the executor may furnish statements to the probate court to disclose the progress made, to report the payment of debts,

and any assets acquired or discovered after the filing of the inventory.

Lastly, the executor should file his final account with the probate court showing all payments made and the balance existing for distribution together with a petition asking for a decree ordering distribution among the parties listed. The petition not only gives the names and addresses of the heirs but the exact relationship and the amount to be paid each.

When the executor receives the decree he should immediately distribute the property and close the account on his books.

As previously stated, the duties of executor and administrator are very much alike. The executor is named in the will whereas the administrator is an officer appointed by the probate court to settle the estate of a person who dies intestate (without leaving a will). The executor carries out the wishes of the testator as expressed by his will, but the administrator must distribute the intestate's property according to the laws of descent and distribution.

Perhaps it would be well to quote here the Massachusetts rule of descent and distribution:

> "Section 1. A surviving husband or wife shall, after the payment of the debts of the deceased and the charges of his last sickness and funeral and of the settlement of his estate, and subject to chapter one hundred and ninety-six, be entitled to the following share in his real

and personal property not disposed of by will:

"(1). If the deceased leaves kindred and no issue, and it appears on determination by the probate court, as hereinafter provided that the whole estate does not exceed five thousand dollars in value, the surviving husband or wife shall take the whole thereof; otherwise such survivor shall take five thousand dollars and one half of the remaining personal and one half of the remaining real property. If the personal property is insufficient to pay said five thousand dollars, the deficiency shall, upon the petition of any party in interest, be paid from the sale or mortgage, in the manner provided for the payment of debts or legacies, of any interest of the deceased in real property which he could have conveyed at the time of his death; and the surviving husband or wife shall be permitted, subject to the approval of the court, to purchase at any such sale, notwithstanding the fact that he or she is the administrator of the estate of the deceased person. A further sale or mortgage of any real estate of the deceased may later be made to provide for any deficiency still remaining. Whenever it shall appear, upon petition to the probate court of any party in interest, and after such notice as the court shall order, and after a hearing thereon, that the whole amount of the estate of the deceased, as found by the inventory, and upon such other evidences as the court shall deem necessary, does not exceed the sum of five thousand dollars over and above the amount necessary to pay the debts and charges of administration, the court shall itself by decree determine the value of said estate, which decree shall be binding upon all parties. If additional property is later discovered, the right or title to the estate covered by such decree shall not be affected thereby, but the court may make such further orders and decrees as are necessary to effect the distribution herein provided for.

"(2). If the deceased leaves issue, the survivor shall take one third of the personal and one third of the real property.

"(3). If the deceased leaves no issue and no kindred, the survivor shall take the whole.

"Section 3. When a person dies siezed of land,

tenements or hereditaments or of any right thereto, or entitled to any interest therein, in fee simple or for the life of another, not having lawfully devised the same, they shall descent subject to his debts and to the rights of the husband or wife and minor children of the deceased as provided in this and in the two preceding chapters and in chapter one hundred and ninety-six as follows:

"(1). In equal shares to his children and to the issue of any deceased child by right of representation; and if there is no surviving child of the intestate then to all his other lineal descendents. If all such descendents are in the same degree of kindred to the intestate, they shall share the estate equally; otherwise, they shall take according to the right of representation.

"(2). If he leaves no issue, in equal shares to his father and mother.

"(3). If he leaves no issue and no mother, to his father.

"(4). If he leaves no issue and no father, to his mother.

"(5). If he leaves no issue and no father or mother, to his brothers and sisters and to the issue of any deceased brother or sister by right of representation; and if there is no surviving brother or sister of the intestate, to all the issue of his deceased brothers or sisters. If all such issue are in the same degree of kindred to the intestate, they shall share the estate equally; otherwise, according to the right of representation.

"(6). If he leaves no issue and no father, mother, brother, or sister and no issue of any deceased brother or sister, then to his next of kin in equal degree; but if there are two or more collateral kindred in equal degree claiming through different ancestors, those claiming through the nearest ancestor shall be preferred to those claiming through an ancestor more remote.

"(7). If an intestate leaves no kindred and no widow or husband, his estate shall escheat to

the commonwealth." (1)

In order to act in the capacity of administrator the bank must file a petition for appointment similar to the one filed by an executor with the exception that it states the deceased died intestate. When the appointment is received it proceeds to administer the estate in the same manner as an executor would have done had there been a will.

As to guardians of minors -- section 2 of chapter 201 states:

> "If a minor is under fourteen the probate court may nominate and appoint his guardian. If he is above that age he may nominate his own guardian, who, if approved by the court, shall be appointed accordingly. Such nomination may be made before a justice of the peace, notary public, special commissioner or city or town clerk within the commonwealth who shall certify the fact to the probate court. If the person nominated is not approved by the probate court, or if the minor resides out of the commonwealth, or if the minor after being cited neglects to nominate a suitable person, the court may nominate and appoint his guardian in the same manner as if he were under fourteen. If the minor is a married woman no guardian shall be appointed without such notice to her husband as the court may order." (2)

To national banks has been granted the power to act as guardian of the property of minors but not of their persons. Appointment may be made by the probate court, by will, or by deed. Guardianship duties involve the preparation of an inventory of the estate, the making of

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(1) Mass. Probate Laws, Chapters 188 to 206 inc.
(2) Ibid.

investments as prescribed by law, preservation of all property, keeping of accurate records and accounts, and upon the minor reaching majority, the rendition of a final accounting to the probate court; when approved, the transfer of all property to the ex-minor in accordance with the decree of the court.

The duties of a national bank in acting as guardian of the property of insane persons and spendthrifts and as conservator of the estate of persons of advanced age or mental weakness are similar to those as guardian of the property of minors.

Often a national bank is named in a will as executor and trustee. In such case, the bank performs the necessary duties as executor and then proceeds with the trusteeship. The trust, however, takes effect from the date of death and the life tenant is entitled to income from that date.

> "In the ordinary trust estate the principal belongs eventually to the remainderman and the income from it, as it accrues, to the life beneficiary. Hence the importance of correctly allocating a receipt or payment so that neither beneficiary may be deprived of what is due him. The matter is of concern to the trustee, since he will be personally chargeable with a payment made to the wrong person which for one reason or another he may be unable to recover.
>
> "The increasingly large investment of trust funds in corporate stocks, and what part of the earnings and dividends of these corporations are income and what are principal, have furnished most of the questions on the allocation of income and principal which have lately come before the court, and are hereinafter taken up in an orderly

manner.

> "In general, at the time the estate comes into the trustee's hands it is all principal in whatever condition it may happen to be, and all yearly increase thereafter is income. This would always be the case if the property came to him without delay and in the form of proper trust investments. Unless the settlor provides otherwise, the life tenant is entitled to income from the time of the testator's death; therefore, when for any reason property does not come into the hands of the trustee for some time after the beginning of the trust, the fund when received will be so apportioned that the life tenant will get the proper rate of interest from the beginning of the trust, and the remainder will be the principal.
>
> "Where the trust fund is established by a legacy, ordinarily it will not be paid over by the executors until they wind up the estate and settle their accounts. This will necessarily be so if the trust fund is the residue of the estates. The general rule as applied in cases is to find that sum which, with interest from the date of the testator's death at the rate which it would have earned if properly invested, will with the interest added equal the sum received from the executors." (1)

Thus we see some of the many responsibilities assumed by an executor in administering the estate of a testator who has made provision in his will for the creation of a trust.

A question which has called forth much thought, concern, and discussion is -- Who is entitled to stock dividends? The Massachusetts rule as stated by Chief Justice Knowlton in the case Minot v. Paine, 99 Massachusetts 101, p. 108 regards cash dividends, no matter how large, as

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(1) Loring, Augustus P., A Trustee's Handbook, pp. 153, 154.

income, and stock dividends, however distributed, as capital.

Section 17 of the Personal Property Law which went into effect in 1926 in New York stated:

> "Unless otherwise provided in a will, deed, or other instrument, which shall hereafter be executed and shall create or declare a trust, any dividend which shall be payable in the stock of the corporation shall be principal and not income of such trust." (1)

But in the case of the Bank of New York and Trust Company as trustee under the will of Billard, the Surrogate on April 28, 1933, did not uphold the above rule. The facts were -- the bank held 100 shares of the common stock of the North American Company which paid no cash dividends but issued stock dividends quarterly from current annual earnings. From time to time the trustee cashed the stock dividends and paid the proceeds to the life beneficiaries. In deciding this case the Surrogate distinguished between such regular stock dividends, which were obviously in lieu of cash dividends each year, and extraordinary dividends which were evidently intended to be covered in Section 17a. (2)

Cumulative dividends in arrears on stock when eventually paid go to the life tenant when paid, regardless of whether they are paid in stock or cash.

"Rights" are generally held in all jurisdictions to

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(1) Loring, Augustus, P., A Trustee's Handbook, p. 167.
(2) Trust Companies, Vol. LVI, p. 636.

be principal.

Losses incurred and profits made on securities held in a trust are charged or credited to principal. All taxes except those assessed on vacant land are chargeable to income as are legacy taxes on a life interest.

The general rule as to bonds purchased at a premium is to amortize the premium giving to the life tenant the income minus the amortization. Where real estate is altered and improvements added, such costs are chargeable to principal but ordinary expenses and repairs must be charged to income. Brokers' commissions on real estate are chargeable to principal as are also commissions on purchase of securities. Insurance premiums are chargeable to income unless the instrument otherwise directs.

The trustee, aside from keeping accurate books and records, must file income tax returns for the various trusts.

Revocable trusts have been a storm center as to Federal taxation for some time and the subject of much litigation.

Decisions handed down by lower federal courts have made it clear that income from a revocable trust is taxable to the grantor only where the grantor has at any time during the taxable year the power to revest in himself title to any part of the principal of the trust.

There seems to be no misunderstanding that absolute irrevocable trusts are taxable under the Gift Tax. But if

the creator of a trust transfers the legal title he is subject to the gift and not the estate tax.

Taxable gifts have been defined by the Bureau of Internal Revenue as follows:

> "Taxable gifts are not restricted to the most usual and obvious kinds, such as gifts of cash, real property, chattels, stocks, and bonds including all federal, state, and municipal bonds. A gift may consist of any species of property whether in trust or otherwise and whether direct or indirect. A taxable gift may be effected by the declaration of a trust; by foregoing a debt; by assigning a judgment; by assigning the benefits of a contract of insurance; by naming a beneficiary other than the donor or his estate of a contract of insurance; by paying a premium under a contract of insurance, the legal incidents of ownership of which are held by another; by conveying title to another and the donor as joint tenants or to the donor's wife or husband and the donor as tenants by the entirety; by purchasing an annuity for the benefit of another; by purchasing service for the benefit of another; or by permitting another to withdraw funds from a joint bank account deposited by the donor."

An interesting decision is that handed by the United States Circuit Court of Appeals in the Duke case. In 1917 James B. Duke created two trust funds amounting to $30,000,000 for the benefit of his daughter. Seven years later Mr. Duke died and the federal government assessed an inheritance tax of $6,000,000 against the trust fund on the grounds that Mr. Duke had made himself the trustee of the fund and that such trust did not become effective until after his death. Evidence was brought to bear that Mr. Duke used the income for his daughter's benefit and directed that the principal should be hers

in the event that she survived him. A prior ruling of the United States Board of Tax Appeals was upheld by the United States Circuit Court of Appeals in favor of the estate. (1)

Apportionment of losses on mortgages and foreclosures is a problem of much concern to the trustee. In Massachusetts, we learn, there is no definite rule but decisions supporting apportionment are found in other states. But Mr. Guy Newhall (2) tells us that there is a broad distinction between a sale of vacant land forming part of the original testator's estate, wherein the question of intention may be material, and the salvage of real estate held under mortgage as security for any interest bearing note, where there never was any intention of acquiring or owning the real estate.

The United States Circuit Court of Appeals decided in the case of Leibes vs. Commissioner (3) that proceeds of a life insurance policy in excess of the exemption of $40,000 must be included as part of the estate of the decedent where he had retained the power to change at any time the beneficiaries.

Relative to investments under living trusts -- a decision rendered about a year ago by the Supreme Court of New York in Chemical Bank and Trust Company vs. Reynaud,

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(1) "Duke Estate Trust Upheld Against Federal Tax" in Trust Companies, January 1933, Vol. LVI, No. 1, p. 128.
(2) Newhall, Guy; "The Settlement of Estates of Deceased"
(3) Trust Companies, p. 555. May 1933. Effect of Important Recent Court Decisions as to Taxation of Revocable Trusts.

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(2) Newhall, Guy; "The Settlement of Estates of Deceased"
(3) Trust Companies, p. 556. May 1932. Effect of Important Recent Court Decisions as to Taxation of Revocable Trusts.

applied liberal rules to the investments made by trustees. It was held that where living trusts are created, the trustor usually provides for the powers of the trustee as to investments, in the trust indenture. If liberal discretion is extended the trustee in this instrument as to investments and reinvestments, it not only is permitted to hold the securities delivered, but to exercise liberal discretion as to sales and reinvestments. (1)

A leading case on the responsibilities of trustees in taking over property from an executor is that of Villard vs. Villard, 219 New York 482. Here is a case in which a will authorized the executors and trustees to retain investments made by the testator. Sale and reinvestments were made by the executor and later the property or securities were turned over to the trustee. The trustee failed to ascertain which securities belonged to the estate originally and which had been purchased by the executor. The ones purchased by the executor were illegal. And so, the trustee was held liable for taking over the securities which the executor had purchased without proper authorization and for failure to dispose of them when proper inquiry would have convinced him that they should be sold. (2)

The general rule seems to be that if unauthorized investments come into the hands of a successor trustee he

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(1) Trust Companies, Vol. LVI, p. 165.
(2) Responsibilities of Trustees in Taking Over Property from Executor, Trust Companies, Feb. 1933, p. 163.

is obliged to sell them and reinvest the proceeds. (1)

As to the final distribution of a trust estate, it probably would be well to illustrate by use of the cases of Edmund A. Rothwell vs. The First National Bank of Boston. The principals issues between the parties were relative to the proper construction of the will of the late James Rothwell made in 1894 and as to the time a trust established under that will should terminate and the trust estate be transferred by the trustees to the ultimate beneficiaries. Edmund A. Rothwell, a grandson and also the petitioner, contended that the trustees had one year from the death of his father, James E. Rothwell, in November, 1928, to complete their duties and to make proper distribution. He endeavored to hold the trustees responsible for all expenses and losses sustained or incurred from the date of his father's death, claiming that they held the property without right although the Probate Court of Norfolk County had approved the trustee's action.

The First National Bank of Boston et all Trustees through Frank H. Stewart, Esq. argued that the trust was to terminate by conveyance of the trustees, after the settlement of their accounts, and not automatically at the expiration of a year and that the trustees had acted accordingly.

The Supreme Judicial Court held that the trust is

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(1) Trust Companies, Vol. LVI, p. 70. "Important Decision by Supreme Court of Mass. Affecting Rights of Trustee".

not yet terminated, not self-executing and hence the trustees at the expiration of one year did not become mere dry agents. For the trustees had duties to perform among which were the liquidation of the indebtedness of the estate, payment of charges, expenses etc., and that the trust will terminate only after the due settlement of the trustees accounts and conveyance. (1)

Because of the fast depreciation of estates in the last four years, many wills have not carried out their maker's real intention to protect loved ones. This is because the wills have not been revised recently enough to fit in with lowered values of estates.

Such a case was the will of the late Mayor Anton J. Cermak of Chicago. He left a will drawn in 1929 before the big securities crash; after which the estate actually shrank from $700,000 to $250,000. The Cermak will provided for many specific bequests and charitable gifts which when paid out will cut severely into the amount of the residue available for immediate relatives and family members. The residue of the estate was left in trust with the local Lawndale National Bank of which Mayor Cermak was director.(2)

As to investments, in the trust department we find an alphabetical card file which contains a card for each specific security held. Different colored cards are used

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(1) Trust Companies, Vol. LVII, p. 70.
(2) Trust Companies, Vol. 56, p. 291, March 1933, "Imperative Need of Revising Wills"

for the various securities, such as a white card for mortgages, a blue card for stocks, and a yellow card for bonds. These cards contain all information relative to the bond, stock, or mortgage from the time it is purchased until sold or otherwise disposed of.

In other files may be found information relative to each trust, such as duplicate trust agreements, copies of wills, appointments, income and inheritance tax reports, as well as information as to securities held which are obtained from financial publications, balance sheets and profit and loss statements.

An income tickler system is in operation which contains cards filed in chronological order specifying income due from each security for the different periods. The tickler cards also contain information relative to the callable provisions of bonds, the payment of income to beneficiaries, the filing of the various reports to clients, courts, and beneficiaries; the filing of income and inheritance taxes as well as the expiration dates of insurance policies on the trust properties.

When income is received, a credit ticket is made out showing the date received, amount, trust account to which it applies, and the security which produced it. In like manner, when payments are made, a debit ticket is employed showing the date, name of beneficiary, and the name of the trust from which the payment is made. Checks are

then mailed to the beneficiaries. These debit and credit tickets are entered directly to the trust department ledger as income cash receipts and disbursements. They are also recorded in the cash journal. Postings are made from the cash journal to a book known as the "daily statement of condition" book.

We are cognizant of the fact that attempts have been made by beneficiaries to hold executors, administrators, and trustees liable for shrinkage in values of securities and real estate values. However, these officers are being uniformly sustained in cases where the judiciary finds that good faith was employed and conscientious service rendered by them.

The decision handed down by Surrogate Wingate of Kings County, New York, substantiates the foregoing statement in the case of McCafferty, New York Law Journal, April 15, 1933.

On October 3, 1929, Mr. McCafferty died leaving an estate consisting of real estate, stock, and bonds valued at that date at several million of dollars. The testator willed practically all his estate equally to his four children, appointing them executors. At the time Mr. McCafferty died, one daughter had preceded him in death and another daughter passed away within a few months of her father's death. Thus two sons were given the administration of the estate.

The first stock market crash occurred about a month after the death of the testator, and this was followed by others. To sell securities in such a market would mean merely to sacrifice them; and so, the executors held them.

Grandchildren of deceased brothers and sisters sought to charge the executors with the loss resulting from their failure to dispose of real estate and securities, but Surrogate Wingate said: "A storm of fright and distrust swept over the stock market during which valuable securities were depreciated and sacrificed, and prices dropped suddenly and low. Certainly it was no time to sell. The stock was paid for, and the estate was strong and able to carry it through the unexpected emergency." (1)

An important decision affecting the duties of trust officers is that in the case of Estate of Booth. Mr. Booth died on February 9, 1931, at New York and left an estate which contained certain shares of stock of the Tokyo Electric Company of Japan valued as of the date of death at over $13,000. In February, 1932, this stock was sold and a loss of more than $5000 was incurred.

In September, 1931, the trust committee investigated the securities and recommended their sale. In an interview with the widow of the testator, the widow told the trust officer that her brother would be interested in the purchase of the shares and that he would shortly arrive in

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(1) Trust Companies, Vol. LVI, p. 407.

America from some European country. In October, 1931, the brother did arrive and entered into negotiations relative to purchasing the shares of stock.

Finally, the brother said that upon his arrival in Japan he would definitely decide about the purchase and let the executor know of his decision. The brother arrived in Japan in February, 1932, and the shares were sold to him at the then current market price in Tokyo. Meanwhile, however, Japan had gone off the gold standard and the securities declined in value. The executor declared that he acted prudently and that he was dealing with a security which had no available market in New York City and therefore delay was impossible.

The court, however, stated that quotations could have been obtained through cable and held that the executor was not chargeable with loss from April, 1931, when it qualified, to September 31. However, the executor was held chargeable with the loss suffered by the estate from the time he knew the securities should be sold.

(1) National banks in performing trust functions are required as previously stated to prepare and file numerous statements and reports. Among these are the probate statements required to be filed in the probate court; state and federal income tax returns, state and federal

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(1) "Decision Affecting Duties of Trust Officers", Trust Companies, Aug. 1933, Vol. LVII, No. 2, p. 123.

inheritance taxes, transfer and gift taxes, and various reports to beneficiaries.

One of the reasons given for the enactment of the Gift Tax Law was to prevent the avoidance of the Federal estate tax. These new federal estate tax rates run to a maximum of forty-five per centum upon estate of ten million dollars.

In the March, 1933, issue of "Trust Companies" appeared the following article:

> "The largest gift tax paid by any individual in the history of the United States was that received in Washington last month from Murry Guggenheim, well-known industrialist and financier of New York. In 1917, Mr. Guggenheim established two trust funds valued at approximately twenty million, for his son and daughter. These funds were revocable, but this power was relinquished in 1925, and under a recent decision of the United States Supreme Court, the donor was held taxable on the gift in the amount of $2,436,544 and interest, bringing the total tax to $3,449,107."

2. Corporate Division

a. Forms and Reports

I am not personally well acquainted with corporate books and records; therefore, I have accepted the authority of Kirkbridge, Sterrett and Willis and follow them in this matter as guides.

In the corporate division of the trust department, we find a loose-leaf ledger employed to record the corporate trusts. In this book are found three sets of sheets for each corporate mortgage. They are:

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1. The abstract sheet, at the top of which appears the title of the account and trust number. Then appears in printed form the principal subjects appearing in corporation mortgages such as:

Mortgage or deed of trust date recorded

Lien

Amount

Interest rate

Interest due

Interest payable at

Bonds due

Bonds payable in gold or coin

Bonds, coupons or registered

Bonds, provisions for exchange from one dlass into another

Bonds, denominations, and numbers of

Bonds to be issued, how when

Bonds issued for what purpose

Bonds to be drawn or purchased how, when

Description of mortgaged property

Sinking fund, provisions of

Statements to be furnished trustee

Releases, power of making

Default

Charges for accepting trust

Charges for certifying bonds

Charges for paying interest

Charges for other services

The reverse side of this sheet is headed -- "Other Provisions of the Mortgages or Deed of Trust" and is used for the recording of documents other than those of the regular type.

2. The second sheet serves as a record of bonds received, certified, and delivered. At the top appears the number of the trust and the title of the account. The top third of the sheet is reserved for the recording of bonds received and bonds certified. On the left hand side are columns for the date, bond numbers, and amount of bonds received. To the right, the bonds certified section contains columns headed date, certified by, bond number, and amount. The lower two-thirds of the sheet is for the record of bonds delivered and occupies the entire width of the sheet allowing for columns headed date, whose order, delivered to, coupon, bond numbers, and amount. The bonds on hand and uncertified may be obtained at any time by taking the difference between bonds received and bonds certified. The amount of certified bonds on hand is determined by finding the difference between the number of bonds certified and the number of bonds delivered.

3. The third sheet is used to record the bonds paid, cancelled and cremated or returned. The upper two-thirds of this sheet is given over to bonds paid and bonds cancelled and contains columns for date, numbers, and amount.

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To the right of this section a space is provided for bonds cancelled and contains columns headed date, cancelled by, number, and amount. The lower section of the page has columns headed date, whose order, coupon, bond numbers, amount, how disposed of, and a space for the signature of the officer who attests to the return of the cancelled bonds or their cremation.

The records just described pertain to the documents and history of each trust. The recording of cash receipts and disbursements is a simple procedure and involves no difficulties.

The records of the transfer agent are kept in stock transfer books and stock ledgers. Aside from an abstract sheet in the record of corporate trusts, a bound transfer book is provided for each issue of stock. At the top of each page appears the name of the corporation whose shares are transferred, usually followed by some such statement as -- "The undersigned, owners and holders of stock of the above-mentioned company, for value received, do hereby, by our respective attorneys, duly appointed, respectfully assign said shares of such capital stock in the manner below set forth." The remainder of the page is in two parts -- the left hand section for certificates cancelled and the right hand for certificates issued. "The certificates cancelled" section contains columns headed number of certificate, number of shares, ledger folio, in

name of (names in which stock was registered) and a space for the signature of the attorney making the transfer. In "the certificates issued section" columns are headed date of certificate, number of certificate, number of shares, ledger folio, name and address of stockholder. The total number of shares surrendered and cancelled should agree with the total number of new shares issued. Postings are made from the transfer book to the stock ledger the day following that on which the transfer was made. The stock ledger is usually in loose-leaf form and from this record, the dividend list is prepared.

Today it is the practice to declare dividends in advance, payable to stockholders of record at the close of business on a fixed date, thus eliminating delay in closing the books during this period.

As previously stated, the registrar examines and gives clear titles to proper transfers while the transfer agent records the transfers.

Among the records of the registrar, we find a record book of corporate trusts which contains abstract sheets for each stock received for registration. Each abstract sheet contains information as to the name of the stock, classes to be registered, compensation to be received, and other important facts and data. On a sheet headed with the number of the trust and the name of the stock, ruled as in ordinary ledger, the total authorized issue

stated in shares is recorded as a credit. This account is debited with the total number of shares registered as issued. Often card ledgers are used to record the foregoing transactions.

Certificates as received by the registrar are examined and entered in a stock register before being signed or cancelled, as the case may be, and a separate stock register book is employed for each stock registered. The pages of the stock register are divided in two sections; the left hand section being for the recording of cancelled certificates, contains columns headed certificate numbers and number of shares; the right hand section used for recording certificates registered, contains columns headed date of registry, name of new stockholder, certificate numbers, shares and cancellation date. The difference between the totals of the "stock registered" columns and the "stock cancelled" columns represents the number of shares outstanding. The figure thus secured should prove with a listing of the open items in the "certificates registered" section.

Among the books of the fiscal agent is found, aside from the abstract sheet (which contains information as to appointment), a scratcher in which all moneys received both as to principal and income is recorded. After entries are made in this book, the money is turned over to the trust department's receiving teller for deposit in the bank.

Coupons are presented to the trust department paying teller in envelopes which specify the title of the security, number and amount of the coupon, and the name of the concern or person presenting them. Perhaps it would be well to state here that coupons which are in payment of interest on corporate securities, excepting municipal or other tax exempt securities, or on United States Government bonds, must be accompanied by ownership certificates signed by the owner. This is in compliance with income tax regulations.

Payments are usually made by check, the stub of the check book containing information as to the name of the payee, title, and the total of each kind of coupon. Cash payments are made from a petty cash fund which is usually replenished by a check at the close of the day. Then all payments made by check are entered in the scratcher from whence they are posted to the corporate ledger. The amount of money on hand and the paid coupons at all times should equal the balance of the account in the corporate ledger. The paid coupons should then be cancelled and returned with a statement to the issuing company. The statement should show the balance of cash on hand from the last statement, the cash received, and payments made, the balance representing the value of the outstanding coupons.

As to the payment of dividends, dividend lists are prepared and certified as correct by the transfer agent. The fiscal agent adds to this list the number and amount of

each check. Upon the issuing of dividend checks, the ledger account containing the funds available for dividends is charged in the scratcher with the total payment. Cancelled checks as returned are checked off against the dividend list.

In paying registered interest the same procedure is followed as in paying dividends, with the exception that if the bondholder has filed no ownership certificate as required by the federal income tax regulations, the fiscal agent must make out the necessary certificates. When payments of principal are made, whether of coupon or registered bonds, the items are treated in like manner.

A separate set of double-entry books is opened for each assigneeship and receivership accepted by the bank, their controlling accounts only appearing on the corporate trust books.

The books and records employed in the agency accounts differ as to the type of service performed but present no difficulties.

In the November, 1933, issue of Trust Companies appeared the following article:

> "The annual report of the Federal Reserve Board covering operations for the past year shows that the board in 1932 approved thirty-three original and fifteen supplementary applications by national banks for permission to exercise fiduciary powers under the provisions of section 11 (k) of the Federal Reserve Act. Two thousand, one hundred ninety-two national banks were holding fiduciary permits

on December 31, 1932, reporting 36 per cent of the number of national banks in operation on that date. Seven national banks during the year 1932 surrendered their right to exercise trust powers under the provisions of section 11 (k) of the Federal Reserve Act.

"Under authority conferred by an act of Congress approved July 2, 1932, which in effect amended section 21 of the Federal Reserve Act, the Comptroller of the Currency may assess the costs of examining the trust departments of national banks against each bank examined in proportion to the amount of its trust business." (1)

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(1) Trust Companies, Trust Activities of National Banks, p. 473.

CHAPTER III

CONCLUSION

National banks offering fiduciary service possess certain predominant advantages over individuals performing similar functions. These manifest advantages may be summarized:

1. Greater permanency -- continuous existence is presumed for the bank.

2. The bank has larger financial resources than are usually possible to an individual.

3. The bank has certainly finer specific skill because it employs experts in the matter of law, taxation, and investment.

4. Being unemotional the bank is free from bias caused by prejudices within a family or among friends.

   (This same impersonality of administration is given as the chief disadvantage in the trust department of a bank -- but the values in impartial execution of a trust far outweigh the few personal and occasional discomforts.)

Especially at this critical time of economic depression, -- do the banks need to rebuild public confidence even as all business if economic reconstruction is to be effected. And in no other way can this be done better than by interpreting to the ordinary layman the functions of the trust department of a national bank: In other words how that bank may best serve him as an individual in his needs to express his will financially, either while living

or after he dies.

For instance -- look at the example in the ever-widening field of life insurance. During 1932 there was more than fourteen billions worth of new life insurance sold in the United States. It has been said in insurance advertisements that about 80% of the amount paid out yearly in life insurance losses is paid out in lump sum and that 80% of this is spent or lost by beneficiaries within five or six years after its receipt. How much more in line with the testators ideal of protection is the trust. Certainly it is not perfect; but it is the nicest instrument yet formed by civilized man to make the economic form fit the spirit of the giver whose gift may be the incarnation of years of energy and hope and very blood of brain and sinew.

But -- the word "trust" is somewhat ambiguous. It is a verb as well as a noun. Its nominative meaning needs to be explained to the layman. When trust accountant at a bank, I was alone in the office one noontime when the phone rang. A girl teller whispered breathlessly that three desperate looking men were at that moment on their way up in the elevator to the trust department. I shoved loose securities in a safe behind me, turned the combination, and unconsciously realizing my duty, I headed for the elevator. Three swarthy workmen, evidently Italians, confronted me. From the biggest one: "The trust?" "Yes,"

said I. He smiled. "Him," he said pointing to a companion. "He broke -- needa da trust." Thankfully, I ushered them to the credit department.

Still, I think the world "needs da trust" in more ways than one.

Many persons do not understand the operations of trusts in closed banks. By Treasury Regulation 31 banks not allowed to perform usual banking functions but licensed to act in fiduciary capacities that were members of the Federal Reserve System were authorized subject to certain provisions to transact trust business in the regular way. Such a bank comes under the Bank Conservation Act after a conservator is appointed. Such a conservator has all rights and powers of an insolvent national bank and is subject to the same obligations. The United States Circuit Court of Appeals upheld a decision that the receiver did succeed to the trust duties and powers of the bank. (1)

As the goal in appointing a conservator is to preserve the good will so that later normal business may be restored, the trust department should be handled so as to cherish the public confidence as well as the tangible assets.

The power to conserve does not imply power to accept new trust business, but should await further decision.

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(1) Trust Companies, Aug. 1933, Vol. LVII, No. 2, p. 121, under "Trust Operations in Closed and Restricted Banks".

Subject to ascertainment as to whether trust moneys are adequately secured, the conservator should pay out any or all interest and principal in strict accord with court decrees or trust instruments. He should provide necessities from cash on hand in respective trust accounts at the time of his appointment. He should use his best judgment in changing investments in order to save the trust principal. And always he should have in mind increasing the public faith in the bank. (1)

To show that the public has not lost faith in the services rendered by national banks in their fiduciary capacity I submit the following statistics.

1. The annual report of the Comptroller of the Currency for the year ending June 30, 1933 disclosed the fact that the volume and number of individual trusts administered by trust departments of national banks during the year were the greatest in the history of the national banking system. To be specific, out of 1845 banks authorized to exercise trust powers, 1478 were engaged in administering 100,356 individual trusts having aggregate value of $6,311,657,753. The new accounts totalled 6852 aggregating $1,669,592,382 over the value of the 1932 assets. There were 10,784 corporate trusts acting as trustees under note and bond issues outstanding amounting to $10,418,426,937, an increase of nearly a billion dollars.

2. Practically one half of the fiduciary accounts in national banks (54,095) were shown to have been created under living or private trust agreements, 46,261 being court and the remainder corporate. The volume of assets held in these trusts totalled $5,029,485,372. The types of

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(1) Trust Companies, Aug. 1933, Vol. LVII, No. 2, p. 121, "Trust Operations in Closed and Restricted Banks".

investment show 43% in bonds, 33% in stocks, 12% in real estate mortgages and over 12% in miscellaneous assets.

3. The corporate fiduciary influence shows its rapid growth when comparisons are made with figures of 1928, the first time detailed compilations were made of the fiduciary activities of national banks. During this five year period accounts increased in number 47364; individual trusts increased in recorded value $3,014,347,634 (48%); corporate trusts state an increase of $2,440,038,083. Under 617 insurance trust agreements 206 banks are acting as trustees covering $32,719,615 worth of insurance policies. In 16,358 such trusts, not matured, with face value proceeds aggregating $696,758,940, 637 banks are made trustees.

4. The facts about bank earnings are meaningful. Gross trust department earnings average $281 for the entire year in banks with a capital of $25,000 or less. Each trust average is $53 per trust. Gross earnings for trust departments located in places having less than 25,000 in population ranged from $362 or $21 per trust while the earnings in cities of more than 100,000 amounted to between $20,157 and $339,987 with average gross earnings per trust of $196.

5. The recently nationalized Continental-Illinois National Bank and Trust Company of Chicago has the largest trust department of all national banks. The Security-First National Bank of Los Angeles being next largest in volume of trust assets. (1)

With all the protection in the world -- unavoidable and unforeseen catastrophies will happen to trust funds -- but rarely, and then the accounts are always exaggerated.

I recall my own first experience as trustee, when I was eight years old -- I had a bosom chum a very thin girl. One noon she gave me her gum, an enormous big wad,

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(1) Trust Companies, February 1934, Vol. LVIII, pp.151,152.

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(1) Trust Companies, February 1934, Vol. LVIII, pp.151,152.

with all the social prestige attaching to such an accumulated hunk, to keep in my mouth for the afternoon. My mouth was bigger and my cheeks fatter, so it was expected a much safer vault. I was to meet her opposite the school at Mrs. Moulton's store at 3.30 P. M. to deliver my trust, a personal one in the true sense of the word.

Early in the afternoon, the teacher looked at my cheek. She was known as a tartar. "I had a great deal of respect for you this morning. Now I have none. Throw away that gum."

"I can't."

"You - you defy me?"

"It - er - doesn't belong to me. I'm keeping it for a girl.

Alas and alack -- my school teacher looked across the street at 4 P. M. and saw the trustor waiting patiently for her trust while the trustee stayed after school. The assets rested in the waste basket. Finally - when we were together again - the very generous trustor said to the trustee who had lost all: "You couldn't help it but still you might have known her -- what she'd do!"

Many opportunities lie ahead for trust service to be of true benefit to American industry. There is as yet a nearly unexploited field for social amelioration through trust service, -- through employment stabilization trusts; through benefit funds for temporarily incapacitated workmen;

through merit reward trusts that help give some of the satisfaction from individual initiative taken away by the drudgery of machines; through pension plans and thrift trusts that will abrogate eventually the pauper and bread lines, -- through profit sharing trusts that make all men brothers. And it is from that concept of brotherhood that trust service has sprung to its civilized consummation in the national bank department.

Trust department technique in national banks is being applied to a national problem, -- the gold standard.

In the March number of The Forum Frank A. Vanderlip suggests a kind of new trust to be set up for the United States Government. He calls this the Federal Monetary Authority.

This new trust would guard the gold stabilization fund -- wholly divorced from gold for speculative purposes. This Federal Monetary Authority would take over the function of the present Treasury and would control the gold reserve.

This trust would further take unto itself the present currency -- issuing and credit power of the Federal Reserve Bank. The men who compose this Federal Monetary Authority which is to combine the control of credit and also the gold reserve and foreign value of the dollar will be trustees, and must combine the ideal personal characteristics of the national trustee; "highly considered" "widely experienced"

beyond the consideration of political manipulation -- even as the vestal virgins of ancient Rome. (1)

The attitude of expected and assumed excellence of trust departments and trustees in general is not a newly assumed attitude. We find it in Plato's discussion of state guardians Republic Book II Chapter XV and XVI. "He, then, who intends to be a good and worthy state - guardian should be by nature a philosopher, spirited, swift, and strong."

A new conception of trust and trustee has arisen as an embodiment and enlargement of the ideals of civilization based on the standards of industry. This is neatly phrased in L. P. Jack's book Constructive Citizenship. The ideal citizen in an industrial age is the good workman. This good workman who is technically very skilled is a trustee for our industrial civilization. A trustee must not only act properly according to law but must frequently act in a fiduciary capacity with no coercion except his own conscience. There is a vast difference between the nominal lip service sophistical trustee and the real sincere genuine trustee. The ideal of an ethics based on industry is that each good workman, himself a trustee should enter in reciprocal relationship with each other workman.

We are all our brother's Keepers. The employer as

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(1) The Forum and Century, March 1934, Gold Standard, New-Style, Frank A. Vanderlip, p. 135.

trustee for the employed should promote high standards of craftsmanship among his workers, and give them decent working conditions -- not using products or engaging in leisure activities which enslave men who labor to maintain them -- but trying to attain for each man the job that will liberate his best energies.

The employee, as trustee for the employer, should give him full value in exchange for benefits received.

The conception of trusteeship has spread from the bank to the whole fabric of society. It has spread to the court where judges are the highest type of trustees in the administration of law. Certainly it pervades the medical professional. Doctors have always held themselves as trustees for life but only lately have they become so self-conscious about their sacred duty as to engage in preventive as well as protective and curative treatment of the body social as well as the body personal. Research workers -- teachers are aware of their mission as trustees for truth and the increase of knowledge.

Woodrow Wilson had a dream of trusteeship carried to the nth power the corporate and reciprocal trusteeship of countries organized in a league of nations.

Trusteeship so ramified would finally change our civilization into a veritable kingdom of God.

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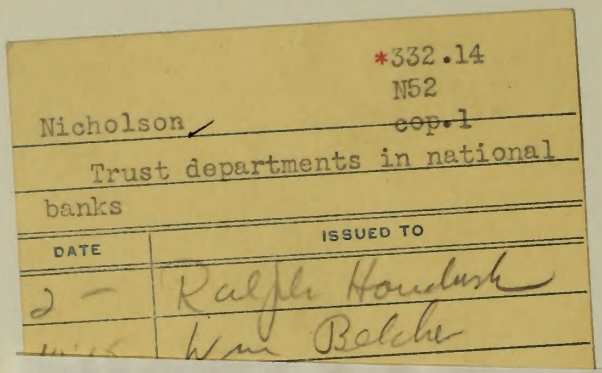
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